

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 56
100TH GENERAL ASSEMBLY

Reported from the Committee on Economic Development, February 7, 2019, with recommendation that the Senate Committee Substitute do pass.

0629S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 620.2010 and 620.2020, RSMo, and to enact in lieu thereof two new sections relating to financial incentives for job creation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 620.2010 and 620.2020, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 620.2010 and
3 620.2020, to read as follows:

620.2010. 1. In exchange for the consideration provided by the new tax
2 revenues and other economic stimuli that will be generated by the new jobs
3 created, a qualified company may, for a period of five years from the date the new
4 jobs are created, or for a period of six years from the date the new jobs are
5 created if the qualified company is an existing Missouri business, retain an
6 amount equal to the withholding tax as calculated under subdivision (30) of
7 section 620.2005 from the new jobs that would otherwise be withheld and
8 remitted by the qualified company under the provisions of sections 143.191 to
9 143.265 if:

10 (1) The qualified company creates ten or more new jobs, and the average
11 wage of the new payroll equals or exceeds ninety percent of the county average
12 wage;

13 (2) The qualified company creates two or more new jobs at a project
14 facility located in a rural area, the average wage of the new payroll equals or
15 exceeds ninety percent of the county average wage, and the qualified company
16 commits to making at least one hundred thousand dollars of new capital
17 investment at the project facility within two years; or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 (3) The qualified company creates two or more new jobs at a project
19 facility located within a zone designated under sections 135.950 to 135.963, the
20 average wage of the new payroll equals or exceeds eighty percent of the county
21 average wage, and the qualified company commits to making at least one hundred
22 thousand dollars in new capital investment at the project facility within two years
23 of approval.

24 2. In addition to any benefits available under subsection 1 of this section,
25 the department may award a qualified company that satisfies subdivision (1) of
26 subsection 1 of this section additional tax credits, issued each year for a period
27 of five years from the date the new jobs are created, or for a period of six years
28 from the date the new jobs are created if the qualified company is an existing
29 Missouri business, in an amount equal to or less than six percent of new payroll;
30 provided that in no event may the total amount of benefits awarded to a qualified
31 company under this section exceed nine percent of new payroll in any calendar
32 year. The amount of tax credits awarded to a qualified company under this
33 subsection shall not exceed the projected net fiscal benefit to the state, as
34 determined by the department, and shall not exceed the least amount necessary
35 to obtain the qualified company's commitment to initiate the project. In
36 determining the amount of tax credits to award to a qualified company under this
37 subsection, the department shall consider the following factors:

38 (1) The significance of the qualified company's need for program benefits;

39 (2) The amount of projected net fiscal benefit to the state of the project
40 and the period in which the state would realize such net fiscal benefit;

41 (3) The overall size and quality of the proposed project, including the
42 number of new jobs, new capital investment, proposed wages, growth potential of
43 the qualified company, the potential multiplier effect of the project, and similar
44 factors;

45 (4) The financial stability and creditworthiness of the qualified company;

46 (5) The level of economic distress in the area;

47 (6) An evaluation of the competitiveness of alternative locations for the
48 project facility, as applicable; and

49 (7) The percent of local incentives committed.

50 3. Upon approval of a notice of intent to receive tax credits under
51 subsections 2 [and], 5, or 6 of this section, the department and the qualified
52 company shall enter into a written agreement covering the applicable project
53 period. The agreement shall specify, at a minimum:

54 (1) The committed number of new jobs, new payroll, and new capital
55 investment for each year during the project period;

56 (2) The date or time period during which the tax credits shall be issued,
57 which may be immediately or over a period not to exceed two years from the date
58 of approval of the notice of intent;

59 (3) Clawback provisions, as may be required by the department; [and]

60 (4) **Financial guarantee provisions, as may be required by the**
61 **department, provided that financial guarantee provisions shall be**
62 **required by the department for tax credits awarded under subsection**
63 **6 of this section; and**

64 (5) Any other provisions the department may require.

65 4. In lieu of the benefits available under sections 1 and 2 of this section,
66 and in exchange for the consideration provided by the new tax revenues and other
67 economic stimuli that will be generated by the new jobs created by the program,
68 a qualified company may, for a period of five years from the date the new jobs are
69 created, or for a period of six years from the date the new jobs are created if the
70 qualified company is an existing Missouri business, retain an amount equal to the
71 withholding tax as calculated under subdivision (30) of section 620.2005 from the
72 new jobs that would otherwise be withheld and remitted by the qualified company
73 under the provisions of sections 143.191 to 143.265 equal to:

74 (1) Six percent of new payroll for a period of five years from the date the
75 required number of new jobs were created if the qualified company creates one
76 hundred or more new jobs and the average wage of the new payroll equals or
77 exceeds one hundred twenty percent of the county average wage of the county in
78 which the project facility is located; or

79 (2) Seven percent of new payroll for a period of five years from the date
80 the required number of jobs were created if the qualified company creates one
81 hundred or more new jobs and the average wage of the new payroll equals or
82 exceeds one hundred forty percent of the county average wage of the county in
83 which the project facility is located.

84 The department shall issue a refundable tax credit for any difference between the
85 amount of benefit allowed under this subsection and the amount of withholding
86 tax retained by the company, in the event the withholding tax is not sufficient to
87 provide the entire amount of benefit due to the qualified company under this
88 subsection.

89 5. In addition to the benefits available under subsection 4 of this section,

90 the department may award a qualified company that satisfies the provisions of
91 subsection 4 of this section additional tax credits, issued each year for a period
92 of five years from the date the new jobs are created, or for a period of six years
93 from the date the new jobs are created if the qualified company is an existing
94 Missouri business, in an amount equal to or less than three percent of new
95 payroll; provided that in no event may the total amount of benefits awarded to
96 a qualified company under this section exceed nine percent of new payroll in any
97 calendar year. The amount of tax credits awarded to a qualified company under
98 this subsection shall not exceed the projected net fiscal benefit to the state, as
99 determined by the department, and shall not exceed the least amount necessary
100 to obtain the qualified company's commitment to initiate the project. In
101 determining the amount of tax credits to award to a qualified company under this
102 subsection, the department shall consider the factors provided under subsection
103 2 of this section.

104 **6. In lieu of the benefits available under subsections 1, 2, 4, and**
105 **5 of this section, and in exchange for the consideration provided by the**
106 **new tax revenues and other economic stimuli that will be generated by**
107 **the new jobs and new capital investment created by the program, the**
108 **department may award a qualified company that satisfies the**
109 **provisions of subdivision (1) of subsection 1 of this section tax credits,**
110 **issued within one year following the qualified company's acceptance of**
111 **the department's proposal for benefits, in an amount equal to or less**
112 **than nine percent of new payroll. The amount of tax credits awarded**
113 **to a qualified company under this subsection shall not exceed the**
114 **projected net fiscal benefit to the state, as determined by the**
115 **department, and shall not exceed the least amount necessary to obtain**
116 **the qualified company's commitment to initiate the project. In**
117 **determining the amount of tax credits to award to a qualified company**
118 **under this subsection, the department shall consider the factors**
119 **provided under subsection 2 of this section and the qualified company's**
120 **commitment to new capital investment and new job creation within the**
121 **state for a period of not less than ten years.**

122 **7. No benefits shall be available under this section for any qualified**
123 **company that has performed significant, project-specific site work at the project**
124 **facility, purchased machinery or equipment related to the project, or has publicly**
125 **announced its intention to make new capital investment at the project facility**

126 prior to receipt of a proposal for benefits under this section or approval of its
127 notice of intent, whichever occurs first.

620.2020. 1. The department shall respond to a written request, by or on
2 behalf of a qualified company, for a proposed benefit award under the provisions
3 of this program within five business days of receipt of such request. Such
4 response shall contain either a proposal of benefits for the qualified company, or
5 a written response refusing to provide such a proposal and stating the reasons for
6 such refusal. A qualified company that intends to seek benefits under the
7 program shall submit to the department a notice of intent. The department shall
8 respond within thirty days to a notice of intent with an approval or a rejection,
9 provided that the department may withhold approval or provide a contingent
10 approval until it is satisfied that proper documentation of eligibility has been
11 provided. Failure to respond on behalf of the department shall result in the
12 notice of intent being deemed approved. A qualified company receiving approval
13 for program benefits may receive additional benefits for subsequent new jobs at
14 the same facility after the full initial project period if the applicable minimum job
15 requirements are met. There shall be no limit on the number of project periods
16 a qualified company may participate in the program, and a qualified company
17 may elect to file a notice of intent to begin a new project period concurrent with
18 an existing project period if the applicable minimum job requirements are
19 achieved, the qualified company provides the department with the required
20 annual reporting, and the qualified company is in compliance with this program
21 and any other state programs in which the qualified company is currently or has
22 previously participated. However, the qualified company shall not receive any
23 further program benefits under the original approval for any new jobs created
24 after the date of the new notice of intent, and any jobs created before the new
25 notice of intent shall not be included as new jobs for purposes of the benefit
26 calculation for the new approval. When a qualified company has filed and
27 received approval of a notice of intent and subsequently files another notice of
28 intent, the department shall apply the definition of project facility under
29 subdivision (18) of section 620.2005 to the new notice of intent as well as all
30 previously approved notices of intent and shall determine the application of the
31 definitions of new job, new payroll, project facility base employment, and project
32 facility base payroll accordingly.

33 2. Notwithstanding any provision of law to the contrary, the benefits
34 available to the qualified company under any other state programs for which the

35 company is eligible and which utilize withholding tax from the new or retained
36 jobs of the company shall first be credited to the other state program before the
37 withholding retention level applicable under this program will begin to accrue.
38 If any qualified company also participates in a job training program utilizing
39 withholding tax, the company shall retain no withholding tax under this program,
40 but the department shall issue a refundable tax credit for the full amount of
41 benefit allowed under this program. The calendar year annual maximum amount
42 of tax credits which may be issued to a qualifying company that also participates
43 in a job training program shall be increased by an amount equivalent to the
44 withholding tax retained by that company under a jobs training program.

45 3. A qualified company receiving benefits under this program shall
46 provide an annual report of the number of jobs and such other information as
47 may be required by the department to document the basis for program benefits
48 available no later than ninety days prior to the end of the qualified company's tax
49 year immediately following the tax year for which the benefits provided under the
50 program are attributed. In such annual report, if the average wage is below the
51 applicable percentage of the county average wage, the qualified company has not
52 maintained the employee insurance as required, or if the number of jobs is below
53 the number required, the qualified company shall not receive tax credits or retain
54 the withholding tax for the balance of the project period. Failure to timely file
55 the annual report required under this section shall result in the forfeiture of tax
56 credits attributable to the year for which the reporting was required and a
57 recapture of withholding taxes retained by the qualified company during such
58 year.

59 4. The department may withhold the approval of any benefits under this
60 program until it is satisfied that proper documentation has been provided, and
61 shall reduce the benefits to reflect any reduction in full-time employees or
62 payroll. Upon approval by the department, the qualified company may begin the
63 retention of the withholding taxes when it reaches the required number of jobs
64 and the average wage meets or exceeds the applicable percentage of county
65 average wage. Tax credits, if any, may be issued upon satisfaction by the
66 department that the qualified company has exceeded the applicable percentage
67 of county average wage and the required number of jobs, **provided that tax**
68 **credits awarded under subsection 6 of section 620.2010 may be issued**
69 **following the qualified company's acceptance of the department's**
70 **proposal and pursuant to the requirements set forth in the written**

71 **agreement between the department and the qualified company under**
72 **subsection 3 of section 620.2010.**

73 5. Any qualified company approved for benefits under this program shall
74 provide to the department, upon request, any and all information and records
75 reasonably required to monitor compliance with program requirements. This
76 program shall be considered a business recruitment tax credit under subdivision
77 (4) of subsection 2 of section 135.800, and any qualified company approved for
78 benefits under this program shall be subject to the provisions of sections 135.800
79 to 135.830.

80 6. Any taxpayer who is awarded benefits under this program who
81 knowingly hires individuals who are not allowed to work legally in the United
82 States shall immediately forfeit such benefits and shall repay the state an
83 amount equal to any state tax credits already redeemed and any withholding
84 taxes already retained.

85 7. The maximum amount of tax credits that may be authorized under this
86 program for any fiscal year shall be limited as follows, less the amount of any tax
87 credits previously obligated for that fiscal year under any of the tax credit
88 programs referenced in subsection 13 of this section:

89 (1) For the fiscal year beginning on July 1, 2013, but ending on or before
90 June 30, 2014, no more than one hundred six million dollars in tax credits may
91 be authorized;

92 (2) For the fiscal year beginning on July 1, 2014, but ending on or before
93 June 30, 2015, no more than one hundred eleven million dollars in tax credits
94 may be authorized; and

95 (3) For any fiscal year beginning on or after July 1, 2015, no more than
96 one hundred sixteen million dollars in tax credits may be authorized for each
97 fiscal year.

98 8. For tax credits for the creation of new jobs under section 620.2010, the
99 department shall allocate the annual tax credits based on the date of the
100 approval, reserving such tax credits based on the department's best estimate of
101 new jobs and new payroll of the project, and any other applicable factors in
102 determining the amount of benefits available to the qualified company under this
103 program, **provided that the department may reserve up to twenty-one**
104 **and one-half percent of the maximum annual amount of tax credits that**
105 **may be authorized under subsection 7 of this section for award under**
106 **subsection 6 of section 620.2010.** However, the annual issuance of tax credits

107 shall be subject to annual verification of actual payroll by the department. Any
108 authorization of tax credits shall expire if, within two years from the date of
109 commencement of operations, or approval if applicable, the qualified company has
110 failed to meet the applicable minimum job requirements. The qualified company
111 may retain authorized amounts from the withholding tax under the project once
112 the applicable minimum job requirements have been met for the duration of the
113 project period. No benefits shall be provided under this program until the
114 qualified company meets the applicable minimum new job requirements, **or, for**
115 **benefits awarded under subsection 6 of section 620.2010, until the**
116 **qualified company has satisfied the requirements set forth in the**
117 **written agreement between the department and the qualified company**
118 **under subsection 3 of section 620.2010.** In the event the qualified company
119 does not meet the applicable minimum new job requirements, the qualified
120 company may submit a new notice of intent or the department may provide a new
121 approval for a new project of the qualified company at the project facility or other
122 facilities.

123 9. Tax credits provided under this program may be claimed against taxes
124 otherwise imposed by chapters 143 and 148, and may not be carried forward, but
125 shall be claimed within one year of the close of the taxable year for which they
126 were issued. Tax credits provided under this program may be transferred, sold,
127 or assigned by filing a notarized endorsement thereof with the department that
128 names the transferee, the amount of tax credit transferred, and the value received
129 for the credit, as well as any other information reasonably requested by the
130 department. For a qualified company with flow-through tax treatment to its
131 members, partners, or shareholders, the tax credit shall be allowed to members,
132 partners, or shareholders in proportion to their share of ownership on the last
133 day of the qualified company's tax period.

134 10. Prior to the issuance of tax credits or the qualified company beginning
135 to retain withholding taxes, the department shall verify through the department
136 of revenue and any other applicable state department that the tax credit
137 applicant does not owe any delinquent income, sales, or use tax or interest or
138 penalties on such taxes, or any delinquent fees or assessments levied by any state
139 department and through the department of insurance, financial institutions and
140 professional registration that the applicant does not owe any delinquent
141 insurance taxes or other fees. Such delinquency shall not affect the approval,
142 except that any tax credits issued shall be first applied to the delinquency and

143 any amount issued shall be reduced by the applicant's tax delinquency. If the
144 department of revenue, the department of insurance, financial institutions and
145 professional registration, or any other state department concludes that a taxpayer
146 is delinquent after June fifteenth but before July first of any year and the
147 application of tax credits to such delinquency causes a tax deficiency on behalf of
148 the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the
149 deficiency in which interest, penalties, and additions to tax shall be tolled. After
150 applying all available credits toward a tax delinquency, the administering agency
151 shall notify the appropriate department and that department shall update the
152 amount of outstanding delinquent tax owed by the applicant. If any credits
153 remain after satisfying all insurance, income, sales, and use tax delinquencies,
154 the remaining credits shall be issued to the applicant, subject to the restrictions
155 of other provisions of law.

156 11. The director of revenue shall issue a refund to the qualified company
157 to the extent that the amount of tax credits allowed under this program exceeds
158 the amount of the qualified company's tax liability under chapter 143 or 148.

159 12. An employee of a qualified company shall receive full credit for the
160 amount of tax withheld as provided in section 143.211.

161 13. Notwithstanding any provision of law to the contrary, beginning
162 August 28, 2013, no new benefits shall be authorized for any project that had not
163 received from the department a proposal or approval for such benefits prior to
164 August 28, 2013, under the development tax credit program created under
165 sections 32.100 to 32.125, the rebuilding communities tax credit program created
166 under section 135.535, the enhanced enterprise zone tax credit program created
167 under sections 135.950 to 135.973, and the Missouri quality jobs program created
168 under sections 620.1875 to 620.1890. The provisions of this subsection shall not
169 be construed to limit or impair the ability of any administering agency to
170 authorize or issue benefits for any project that had received an approval or a
171 proposal from the department under any of the programs referenced in this
172 subsection prior to August 28, 2013, or the ability of any taxpayer to redeem any
173 such tax credits or to retain any withholding tax under an approval issued prior
174 to that date. The provisions of this subsection shall not be construed to limit or
175 in any way impair the ability of any governing authority to provide any local
176 abatement or designate a new zone under the enhanced enterprise zone program
177 created by sections 135.950 to 135.963. Notwithstanding any provision of law to
178 the contrary, no qualified company that is awarded benefits under this program

179 shall:

180 (1) Simultaneously receive benefits under the programs referenced in this
181 subsection at the same capital investment; or

182 (2) Receive benefits under the provisions of section 620.1910 for the same
183 jobs.

184 14. If any provision of sections 620.2000 to 620.2020 or application thereof
185 to any person or circumstance is held invalid, the invalidity shall not affect other
186 provisions or application of these sections which can be given effect without the
187 invalid provisions or application, and to this end, the provisions of sections
188 620.2000 to 620.2020 are hereby declared severable.

189 15. By no later than January 1, 2014, and the first day of each calendar
190 quarter thereafter, the department shall present a quarterly report to the general
191 assembly detailing the benefits authorized under this program during the
192 immediately preceding calendar quarter to the extent such information may be
193 disclosed under state and federal law. The report shall include, at a minimum:

194 (1) A list of all approved and disapproved applicants for each tax credit;

195 (2) A list of the aggregate amount of new or retained jobs that are directly
196 attributable to the tax credits authorized;

197 (3) A statement of the aggregate amount of new capital investment
198 directly attributable to the tax credits authorized;

199 (4) Documentation of the estimated net state fiscal benefit for each
200 authorized project and, to the extent available, the actual benefit realized upon
201 completion of such project or activity; and

202 (5) The department's response time for each request for a proposed benefit
203 award under this program.

204 16. The department may adopt such rules, statements of policy,
205 procedures, forms, and guidelines as may be necessary to carry out the provisions
206 of sections 620.2000 to 620.2020. Any rule or portion of a rule, as that term is
207 defined in section 536.010, that is created under the authority delegated in this
208 section shall become effective only if it complies with and is subject to all of the
209 provisions of chapter 536 and, if applicable, section 536.028. This section and
210 chapter 536 are nonseverable and if any of the powers vested with the general
211 assembly pursuant to chapter 536 to review, to delay the effective date, or to
212 disapprove and annul a rule are subsequently held unconstitutional, then the
213 grant of rulemaking authority and any rule proposed or adopted after August 28,
214 2013, shall be invalid and void.

215 17. Under section 23.253 of the Missouri sunset act:

216 (1) The provisions of the program authorized under sections 620.2000 to
217 620.2020 shall be reauthorized as of August 28, 2018, and shall expire on August
218 28, 2030; and

219 (2) If such program is reauthorized, the program authorized under this
220 section shall automatically sunset twelve years after the effective date of this
221 reauthorization of sections 620.2000 to 620.2020; and

222 (3) Sections 620.2000 to 620.2020 shall terminate on September first of
223 the calendar year immediately following the calendar year in which the program
224 authorized under sections 620.2000 to 620.2020 is sunset.

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Bill

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