

FIRST REGULAR SESSION

SENATE BILL NO. 180

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Pre-filed December 14, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0990S.011

AN ACT

To repeal sections 620.2005 and 620.2010, RSMo, and to enact in lieu thereof two new sections relating to incentives for the creation of military jobs.

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

Section A. Sections 620.2005 and 620.2010, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 620.2005 and
3 620.2010, to read as follows:

620.2005. 1. As used in sections 620.2000 to 620.2020, the following
2 terms mean:

3 (1) "Average wage", the new payroll divided by the number of new jobs,
4 or the payroll of the retained jobs divided by the number of retained jobs;

5 (2) "Commencement of operations", the starting date for the qualified
6 company's first new employee, which shall be no later than twelve months from
7 the date of the approval;

8 (3) "County average wage", the average wages in each county as
9 determined by the department for the most recently completed full calendar
10 year. However, if the computed county average wage is above the statewide
11 average wage, the statewide average wage shall be deemed the county average
12 wage for such county for the purpose of determining eligibility. The department
13 shall publish the county average wage for each county at least
14 annually. Notwithstanding the provisions of this subdivision to the contrary, for
15 any qualified company that in conjunction with their project is relocating
16 employees from a Missouri county with a higher county average wage, the
17 company shall obtain the endorsement of the governing body of the community
18 from which jobs are being relocated or the county average wage for their project

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

19 shall be the county average wage for the county from which the employees are
20 being relocated;

21 (4) "Department", the Missouri department of economic development;

22 (5) "Director", the director of the department of economic development;

23 (6) "Employee", a person employed by a qualified company, excluding:

24 (a) Owners of the qualified company unless the qualified company is
25 participating in an employee stock ownership plan; or

26 (b) Owners of a noncontrolling interest in stock of a qualified company
27 that is publicly traded;

28 (7) "Existing Missouri business", a qualified company that, for the
29 ten-year period preceding submission of a notice of intent to the department, had
30 a physical location in Missouri and full-time employees who routinely [perform]
31 **performed** job duties within Missouri;

32 (8) "Full-time employee", an employee of the qualified company that is
33 scheduled to work an average of at least thirty-five hours per week for a
34 twelve-month period, and one for which the qualified company offers health
35 insurance and pays at least fifty percent of such insurance premiums. An
36 employee that spends less than fifty percent of the employee's work time at the
37 facility shall be considered to be located at a facility if the employee receives his
38 or her directions and control from that facility, is on the facility's payroll, one
39 hundred percent of the employee's income from such employment is Missouri
40 income, and the employee is paid at or above the applicable percentage of the
41 county average wage;

42 (9) **"Industrial development authority", an industrial development**
43 **authority organized under chapter 349 that has entered into a formal**
44 **written memorandum of understanding with a branch of the United**
45 **States Department of Defense regarding a qualified military project;**

46 (10) "Local incentives", the present value of the dollar amount of direct
47 benefit received by a qualified company for a project facility from one or more
48 local political subdivisions, but this term shall not include loans or other funds
49 provided to the qualified company that shall be repaid by the qualified company
50 to the political subdivision;

51 [(10)] (11) **"Memorandum of understanding", an agreement**
52 **executed by an industrial development authority and a branch of the**
53 **United States Department of Defense, a copy of which is provided to**
54 **the department, that includes, but is not limited to:**

55 **(a) The requirement for the Department of Defense to provide**
56 **the total number of existing jobs, new jobs, and average salaries to the**
57 **industrial development authority and the department on an annual**
58 **basis for the specified term of the benefit;**

59 **(b) The requirement for the Department of Defense to provide an**
60 **accounting of the expenditures of capital investment made by the**
61 **military directly related to the qualified military project to the**
62 **industrial development authority and the department on an annual**
63 **basis for the specified term of the benefit;**

64 **(c) The process by which the industrial development authority**
65 **will monetize the credits annually and any transaction cost or**
66 **administrative fee charged by the industrial development authority to**
67 **the Department of Defense on an annual basis;**

68 **(d) The requirement for the industrial development authority to**
69 **provide proof to the department of the payment made to the qualified**
70 **military project on an annual basis, including the amount of such**
71 **payment;**

72 **(e) The schedule of the maximum amount of tax credits that may**
73 **be authorized each year for the project and the specified term of the**
74 **benefit, as provided by the department; and**

75 **(f) A requirement that the annual benefit paid shall be the lesser**
76 **of the maximum amount of tax credits authorized or the actual**
77 **calculated benefit derived from the number of new jobs and average**
78 **salaries;**

79 **(12) "NAICS" or "NAICS industry classification", the classification**
80 **provided by the most recent edition of the North American Industry Classification**
81 **System as prepared by the Executive Office of the President, Office of**
82 **Management and Budget;**

83 **[(11)] (13) "New capital investment", shall include costs incurred by the**
84 **qualified company at the project facility after acceptance by the qualified**
85 **company of the proposal for benefits from the department or the approval notice**
86 **of intent, whichever occurs first, for real or personal property, and may include**
87 **the value of finance or capital leases for real or personal property for the term of**
88 **such lease at the project facility executed after acceptance by the qualified**
89 **company of the proposal for benefits from the department or the approval of the**
90 **notice of intent;**

91 **[(12)] (14) "New direct local revenue", the present value of the dollar**

92 amount of direct net new tax revenues of the local political subdivisions likely to
93 be produced by the project over a ten-year period as calculated by the
94 department, excluding local earnings tax, and net new utility revenues, provided
95 the local incentives include a discount or other direct incentives from utilities
96 owned or operated by the political subdivision;

97 [(13)] (15) "New job", the number of full-time employees located at the
98 project facility that exceeds the project facility base employment less any decrease
99 in the number of full-time employees at related facilities below the related facility
100 base employment. No job that was created prior to the date of the notice of intent
101 shall be deemed a new job;

102 [(14)] (16) "New payroll", the amount of wages paid for all new jobs,
103 located at the project facility during the qualified company's tax year that exceeds
104 the project facility base payroll;

105 [(15)] (17) "Notice of intent", a form developed by the department and
106 available online, completed by the qualified company, and submitted to the
107 department stating the qualified company's intent to request benefits under this
108 program;

109 [(16)] (18) "Percent of local incentives", the amount of local incentives
110 divided by the amount of new direct local revenue;

111 [(17)] (19) "Program", the Missouri works program established in
112 sections 620.2000 to 620.2020;

113 [(18)] (20) "Project facility", the building or buildings used by a qualified
114 company at which new or retained jobs and any new capital investment are or
115 will be located. A project facility may include separate buildings located within
116 sixty miles of each other such that their purpose and operations are interrelated;
117 provided that where the buildings making up the project facility are not located
118 within the same county, the average wage of the new payroll shall exceed the
119 applicable percentage of the highest county average wage among the counties in
120 which the buildings are located. Upon approval by the department, a subsequent
121 project facility may be designated if the qualified company demonstrates a need
122 to relocate to the subsequent project facility at any time during the project period;

123 [(19)] (21) "Project facility base employment", the greater of the number
124 of full-time employees located at the project facility on the date of the notice of
125 intent or, for the twelve-month period prior to the date of the notice of intent, the
126 average number of full-time employees located at the project facility. In the event
127 the project facility has not been in operation for a full twelve-month period, the

128 average number of full-time employees for the number of months the project
129 facility has been in operation prior to the date of the notice of intent;

130 [(20)] **(22)** "Project facility base payroll", the annualized payroll for the
131 project facility base employment or the total amount of wages paid by the
132 qualified company to full-time employees of the qualified company located at the
133 project facility in the twelve months prior to the notice of intent. For purposes
134 of calculating the benefits under this program, the amount of base payroll shall
135 increase each year based on an appropriate measure, as determined by the
136 department;

137 [(21)] **(23)** "Project period", the time period within which benefits are
138 awarded to a qualified company or within which the qualified company is
139 obligated to perform under an agreement with the department, whichever is
140 greater;

141 [(22)] **(24)** "Projected net fiscal benefit", the total fiscal benefit to the
142 state less any state benefits offered to the qualified company, as determined by
143 the department;

144 [(23)] **(25)** "Qualified company", a firm, partnership, joint venture,
145 association, private or public corporation whether organized for profit or not, or
146 headquarters of such entity registered to do business in Missouri that is the
147 owner or operator of a project facility, certifies that it offers health insurance to
148 all full-time employees of all facilities located in this state, and certifies that it
149 pays at least fifty percent of such insurance premiums. For the purposes of
150 sections 620.2000 to 620.2020, the term "qualified company" shall not include:

- 151 (a) Gambling establishments (NAICS industry group 7132);
- 152 (b) Store front consumer-based retail trade establishments (under NAICS
153 sectors 44 and 45), except with respect to any company headquartered in this
154 state with a majority of its full-time employees engaged in operations not within
155 the NAICS codes specified in this subdivision;
- 156 (c) Food and drinking places (NAICS subsector 722);
- 157 (d) Public utilities (NAICS 221 including water and sewer services);
- 158 (e) Any company that is delinquent in the payment of any nonprotested
159 taxes or any other amounts due the state or federal government or any other
160 political subdivision of this state;
- 161 (f) Any company requesting benefits for retained jobs that has filed for or
162 has publicly announced its intention to file for bankruptcy protection. However,
163 a company that has filed for or has publicly announced its intention to file for

164 bankruptcy may be a qualified company provided that such company:

165 a. Certifies to the department that it plans to reorganize and not to
166 liquidate; and

167 b. After its bankruptcy petition has been filed, it produces proof, in a form
168 and at times satisfactory to the department, that it is not delinquent in filing any
169 tax returns or making any payment due to the state of Missouri, including but
170 not limited to all tax payments due after the filing of the bankruptcy petition and
171 under the terms of the plan of reorganization. Any taxpayer who is awarded
172 benefits under this subsection and who files for bankruptcy under Chapter 7 of
173 the United States Bankruptcy Code, Title 11 U.S.C., shall immediately notify the
174 department and shall forfeit such benefits and shall repay the state an amount
175 equal to any state tax credits already redeemed and any withholding taxes
176 already retained;

177 (g) Educational services (NAICS sector 61);

178 (h) Religious organizations (NAICS industry group 8131);

179 (i) Public administration (NAICS sector 92);

180 (j) Ethanol distillation or production;

181 (k) Biodiesel production; or

182 (l) Health care and social services (NAICS sector 62).

183 Notwithstanding any provision of this section to the contrary, the headquarters,
184 administrative offices, or research and development facilities of an otherwise
185 excluded business may qualify for benefits if the offices or facilities serve a
186 multistate territory. In the event a national, state, or regional headquarters
187 operation is not the predominant activity of a project facility, the jobs and
188 investment of such operation shall be considered eligible for benefits under this
189 section if the other requirements are satisfied;

190 **[(24)] (26) "Qualified military project", the expansion or**
191 **improvement of a military base or installation within this state that**
192 **causes an increase or retention of military or civilian support**
193 **personnel and investment in real or tangible personal property at the**
194 **base or installation expressly for the purposes of serving a new or**
195 **expanded military activity or unit;**

196 **(27) "Related company", shall mean:**

197 (a) A corporation, partnership, trust, or association controlled by the
198 qualified company;

199 (b) An individual, corporation, partnership, trust, or association in control

200 of the qualified company; or

201 (c) Corporations, partnerships, trusts or associations controlled by an
202 individual, corporation, partnership, trust, or association in control of the
203 qualified company. As used in this paragraph, "control of a qualified company"
204 shall mean:

205 a. Ownership, directly or indirectly, of stock possessing at least fifty
206 percent of the total combined voting power of all classes of stock entitled to vote
207 in the case of a qualified company that is a corporation;

208 b. Ownership of at least fifty percent of the capital or profits interest in
209 such qualified company if it is a partnership or association;

210 c. Ownership, directly or indirectly, of at least fifty percent of the
211 beneficial interest in the principal or income of such qualified company if it is a
212 trust, and ownership shall be determined as provided in Section 318 of the
213 Internal Revenue Code of 1986, as amended;

214 [(25)] **(28)** "Related facility", a facility operated by the qualified company
215 or a related company located in this state that is directly related to the operations
216 of the project facility or in which operations substantially similar to the
217 operations of the project facility are performed;

218 [(26)] **(29)** "Related facility base employment", the greater of the number
219 of full-time employees located at all related facilities on the date of the notice of
220 intent or, for the twelve-month period prior to the date of the notice of intent, the
221 average number of full-time employees located at all related facilities of the
222 qualified company or a related company located in this state;

223 [(27)] **(30)** "Related facility base payroll", the annualized payroll of the
224 related facility base payroll or the total amount of taxable wages paid by the
225 qualified company to full-time employees of the qualified company located at a
226 related facility in the twelve months prior to the filing of the notice of intent. For
227 purposes of calculating the benefits under this program, the amount of related
228 facility base payroll shall increase each year based on an appropriate measure,
229 as determined by the department;

230 [(28)] **(31)** "Rural area", a county in Missouri with a population less than
231 seventy-five thousand or that does not contain an individual city with a
232 population greater than fifty thousand according to the most recent federal
233 decennial census;

234 [(29)] **(32)** "Tax credits", tax credits issued by the department to offset
235 the state taxes imposed by chapters 143 and 148, or which may be sold or

236 refunded as provided for in this program;

237 [(30)] **(33)** "Withholding tax", the state tax imposed by sections 143.191
238 to 143.265. For purposes of this program, the withholding tax shall be computed
239 using a schedule as determined by the department based on average wages[;
240 and].

241 [(31)] **2.** This section is subject to the provisions of section 196.1127.

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

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 of this section, the department and the qualified company
52 shall enter into a written agreement covering the applicable project period. The
53 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) Any other provisions the department may require.

61 4. In lieu of the benefits available under sections 1 and 2 of this section,
62 and in exchange for the consideration provided by the new tax revenues and other
63 economic stimuli that will be generated by the new jobs created by the program,
64 a qualified company may, for a period of five years from the date the new jobs are
65 created, or for a period of six years from the date the new jobs are created if the
66 qualified company is an existing Missouri business, retain an amount equal to the

67 withholding tax as calculated under subdivision (30) of section 620.2005 from the
68 new jobs that would otherwise be withheld and remitted by the qualified company
69 under the provisions of sections 143.191 to 143.265 equal to:

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

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

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

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

100 6. No benefits shall be available under this section for any qualified
101 company that has performed significant, project-specific site work at the project
102 facility, purchased machinery or equipment related to the project, or has publicly

103 announced its intention to make new capital investment at the project facility
104 prior to receipt of a proposal for benefits under this section or approval of its
105 notice of intent, whichever occurs first.

106 **7. In lieu of any other benefits provided under this section, and**
107 **in exchange for the creation of new jobs or retention of existing jobs,**
108 **as well as the investments required under subdivision (26) of section**
109 **620.2005, the department may award tax credits to an industrial**
110 **development authority for a qualified military project in an amount**
111 **equal to the withholding taxes withheld and remitted under the**
112 **provisions of sections 143.191 to 143.265 that are associated with the**
113 **civilian and military new jobs located at the facility and directly**
114 **impacted by the qualified military project. The tax credits shall be**
115 **issued for a term of no more than fifteen years, and the total amount of**
116 **tax credits issued shall be the least amount necessary to ensure the**
117 **completion of the qualified military project. A qualified military**
118 **project shall not be eligible for benefits under this subsection unless**
119 **the department determines that such project shall provide a net**
120 **positive fiscal impact to the state.**

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