

FIRST REGULAR SESSION

SENATE BILL NO. 477

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Read 1st time February 27, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2394S.01I

AN ACT

To amend chapter 620, RSMo, by adding thereto seven new sections relating to rural workforce development incentives.

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

Section A. Chapter 620, RSMo, is amended by adding thereto seven new sections, to be known as sections 620.3500, 620.3505, 620.3510, 620.3515, 620.3520, 620.3525, and 620.3530, to read as follows:

620.3500. Sections 620.3500 to 620.3530 shall be known and may be cited as the "Missouri Rural Workforce Development Act".

620.3505. As used in sections 620.3500 to 620.3530, the following terms shall mean:

(1) "Affiliate", an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another entity. An entity is controlled by another entity if the controlling entity holds, directly or indirectly, the majority voting or ownership interest in the controlled entity or has control over day-to-day operations of the controlled entity by contract or by law;

(2) "Applicable percentage", zero percent for the first two credit allowance dates, and fifteen percent for the next four credit allowance dates;

(3) "Capital investment", any equity investment in a rural fund by a rural investor which:

(a) Is acquired after the effective date of sections 620.3500 to 620.3530 at its original issuance solely in exchange for cash;

(b) Has one hundred percent of its cash purchase price used by the rural fund to make qualified investments in eligible businesses located in this state by the third anniversary of the initial credit

19 allowance date; and

20 (c) Is designated by the rural fund as a capital investment under
21 sections 620.3500 to 620.3530 and is certified by the department under
22 the provisions of section 620.3510. This shall include any capital
23 investment that does not meet the provisions of subdivision (1) of
24 subsection 1 of section 620.3510, if such investment was a capital
25 investment in the hands of a prior holder;

26 (4) "Credit allowance date", the date on which the department
27 certifies a rural fund's capital investment and each of the five
28 anniversary dates of such date thereafter;

29 (5) "Department", the Missouri department of economic
30 development;

31 (6) "Eligible business", a business that, at the time of the initial
32 qualified investment in the business:

33 (a) Has fewer than two hundred fifty employees; and

34 (b) Either has its principal business operations in:

35 a. An opportunity zone as defined in 26 U.S.C. Section 1400Z-1,
36 as amended; or

37 b. One or more rural areas in this state.

38 Any business which is classified as an eligible business at the time of
39 the initial investment in such business by a rural fund shall remain
40 classified as an eligible business and may receive follow-on investments
41 from any rural fund, and such follow-on investments shall be qualified
42 investments even though such business may not meet the definition of
43 an eligible business at the time of such follow-on investments;

44 (7) "Eligible distribution":

45 (a) A distribution of cash to one or more equity owners of a rural
46 investor to fully or partially offset a projected increase in the owner's
47 federal or state tax liability, including any penalties and interest,
48 related to the owner's ownership, management, or operation of the
49 rural investor;

50 (b) A distribution of cash as payment of interest and principal
51 on the debt of the rural investor or rural fund; or

52 (c) A distribution of cash related to the reasonable costs and
53 expenses of forming, syndicating, managing, and operating the rural
54 investor or the rural fund, or a return of equity to affiliates of a rural
55 investor or rural fund.

56 Such distributions may include reasonable and necessary fees paid for
57 professional services, including legal and accounting services, related
58 to the formation and operation of the rural fund and an annual
59 management fee that shall not exceed two percent of the rural fund's
60 qualified investment authority;

61 (8) "Full-time job", a job in this state that is:

62 (a) Performed by an employee of an eligible business and
63 requires thirty-five hours of work or more per week;

64 (b) Contracted out by an eligible business to perform work
65 equivalent of a full-time employee of an eligible business; or

66 (c) A part-time equivalent;

67 (9) "Jobs created", any full-time jobs created by an eligible
68 business that are attributable to a qualified investment by a rural fund,
69 calculated at the end of each twelve month period following a rural
70 fund's initial qualified investment by subtracting the number of full-
71 time jobs at an eligible business at the beginning of such twelve month
72 period from the monthly average job rate for that same twelve month
73 period; provided, however, that if the number calculated is less than
74 zero, such number shall be reported as zero;

75 (10) "Jobs retained", any full-time jobs that existed at an eligible
76 business prior to a rural fund's initial qualified investment and are
77 retained at the end of each twelve month period following a rural
78 fund's qualified investment, calculated based on the monthly average
79 job rate for the prior twelve month period. The reported number of
80 jobs retained for a year shall not exceed the number reported on the
81 initial report under section 620.3530;

82 (11) "Monthly average job rate", the sum of the number of full-
83 time jobs existing on the last day of each month of the year divided by
84 twelve;

85 (12) "Part-time equivalent", the number of part-time employees
86 working less than thirty-five hours per week employed by an eligible
87 business equivalent to one full-time job, calculated by taking the
88 weekly average hours worked by part-time employees for a week
89 aggregated to determine the number of full-time equivalent jobs;

90 (13) "Principal business operations", the location where at least
91 sixty percent of a business's employees work or where employees who
92 are paid at least sixty percent of such business's payroll work. A

93 business that has agreed to relocate employees using the proceeds of
94 a qualified investment to establish its principal business operations in
95 a new location shall be deemed to have its principal business
96 operations in such new location if it satisfied the requirements of this
97 subdivision no later than three hundred sixty days after receiving a
98 qualified investment;

99 (14) "Purchase price", the amount paid to the rural fund that
100 issues a capital investment which shall not exceed the amount of
101 capital investment authority certified under the provisions of section
102 620.3510;

103 (15) "Qualified investment", any investment in an eligible
104 business or any loan to an eligible business with a stated maturity date
105 of at least one year after the date of issuance, excluding revolving lines
106 of credit and senior secured debt unless the eligible business has a
107 credit refusal letter or similar correspondence from a depository
108 institution or a referral letter or similar correspondence from a
109 depository institution referring the business to a rural fund; provided
110 that, with respect to any one eligible business, the maximum amount of
111 investments made in such business by one or more rural funds, on a
112 collective basis with all of the businesses' affiliates, with the proceeds
113 of capital investments shall be the greater of twenty percent of the
114 rural fund's capital investment authority or six million five hundred
115 thousand dollars, exclusive of investments made with repaid or
116 redeemed investments or interest or profits realized thereon;

117 (16) "Rural area", any county of this state that has a population
118 of less than one hundred thousand according to the 2010 decennial
119 census of the United States;

120 (17) "Rural fund", an entity certified by the department under the
121 provisions of section 620.3510;

122 (18) "Rural investor", an entity that makes a capital investment
123 in a rural fund;

124 (19) "State tax liability", any liability incurred by any entity
125 subject to the state income tax imposed under chapter 143, excluding
126 withholding tax imposed under sections 143.191 to 143.265, or an
127 insurance company paying an annual tax on its gross premium receipts,
128 or other financial institution paying taxes to the state or any political
129 subdivision of the state under the provisions of chapter 148, or an

130 express company which pays an annual tax on its gross receipts in this
131 state.

620.3510. 1. A rural fund that seeks to have an equity investment
2 certified as a capital investment eligible for credits authorized under
3 the provisions of sections 620.3500 to 620.3530 shall apply to the
4 department. The department shall begin accepting applications within
5 ninety days of the effective date of sections 620.3500 to 620.3530. The
6 application shall include:

7 (1) The amount of capital investment requested;

8 (2) A copy of the applicant's or an affiliate of the applicant's
9 license as a rural business investment company under 7 U.S.C. Section
10 2009cc or as a small business investment company under 15 U.S.C.
11 Section 681, and a certificate executed by an executive officer of the
12 applicant attesting that such license remains in effect and has not been
13 revoked;

14 (3) Evidence that, as of the date the application is submitted, the
15 applicant or affiliates of the applicant have invested at least one
16 hundred million dollars in nonpublic companies located in rural areas
17 within the United States;

18 (4) A business plan that includes a revenue impact assessment
19 projecting state and local tax revenue to be generated by the
20 applicant's proposed qualified investments, prepared by a nationally
21 recognized, third-party, independent economic forecasting firm using
22 a dynamic economic forecasting model that analyzes the applicant's
23 business plan over the ten years following the date the application is
24 submitted to the department. Such plan shall include an estimate of
25 the number of jobs created and jobs retained in this state as a result of
26 the applicant's qualified investments; and

27 (5) A nonrefundable application fee of five thousand dollars
28 payable to the department.

29 2. Within thirty days after the receipt of a completed application,
30 the department shall grant or deny the application in full or in
31 part. The department shall deny the application if:

32 (1) The applicant does not satisfy all of the criteria provided
33 under subsection 1 of this section; or

34 (2) The revenue impact assessment submitted with the
35 application does not demonstrate that the applicant's business plan will

36 result in a positive economic impact on this state over a ten year
37 period that exceeds the cumulative amount of tax credits that would be
38 issued to the applicant if the application were approved.

39 3. If the department denies any part of the application, it shall
40 inform the applicant of the grounds for such denial. If the applicant
41 provides any additional information required by the department or
42 otherwise completes its application within fifteen days of the notice of
43 denial, the application shall be considered completed as of the original
44 date of submission. If the applicant fails to provide the information or
45 fails to complete its application within the fifteen day period, the
46 application shall remain denied and shall be resubmitted in full with
47 a new submission date.

48 4. Upon approval of an application, the department shall certify
49 the proposed equity investment as a capital investment eligible for
50 credits under sections 620.3500 to 620.3530. The department shall
51 provide written notice of the certification to the rural fund. The
52 department shall certify capital investments in the order that the
53 applications are received by the department.

620.3515. 1. The department shall certify capital
2 investments. Within ninety days of the applicant receiving notice of
3 certification, the rural fund shall issue the capital investment to, and
4 receive cash in the amount of the certified amount from, a rural
5 investor. At least ten percent of the rural investor's capital investment
6 shall be composed of capital raised by the rural investor from sources,
7 including directors, members, employees, officers, and affiliates of the
8 rural investor, other than the amount invested by the allocatee
9 claiming the tax credits in exchange for such allocation of tax
10 credits. The rural fund shall provide the department with evidence of
11 the receipt of the cash investment within ninety-five days of the
12 applicant receiving notice of certification.

13 2. If the rural fund does not receive the cash investment and
14 issue the capital investment within such time period following receipt
15 of the certification notice, the certification shall lapse and the rural
16 fund shall not issue the capital investment without reapplying to the
17 department for certification.

18 3. A rural fund, before making a qualified investment, may
19 request from the department a written opinion as to whether the

20 business in which it proposes to invest is an eligible business. The
21 department, not later than the fifteenth business day after the date of
22 receipt of such request, shall notify the rural fund of its determination.
23 If the department fails to notify the rural fund of its determination by
24 the twentieth business day, the business in which the rural fund
25 proposes to invest shall be deemed an eligible business.

620.3520. 1. Upon making a capital investment in a rural fund,
2 a rural investor shall have a vested right to a credit against such rural
3 investor's state tax liability that may be utilized on each credit
4 allowance date of such capital investment in an amount equal to the
5 applicable percentage for such credit allowance date multiplied by the
6 purchase price paid to the rural fund for the capital investment. The
7 amount of the credit claimed by a rural investor shall not exceed the
8 amount of such rural investor's state tax liability for the tax year for
9 which the credit is claimed. Any amount of credit that a rural investor
10 is prohibited from claiming in a taxable year may be carried forward
11 for use in any subsequent taxable year.

12 2. No credit claimed under the provisions of sections 620.3500 to
13 620.3530 shall be refundable or saleable on the open market. Credits
14 earned by or allocated to a partnership, limited liability company, or
15 S-corporation may be allocated to the partners, members, or
16 shareholders of such entity for their direct use in accordance with the
17 provisions of any agreement among such partners, members, or
18 shareholders, and a rural fund shall notify the department of the names
19 of the entities that are eligible to utilize credits pursuant to an
20 allocation of credits or a change in allocation of credits, or due to a
21 transfer of a capital investment upon such allocation, change, or
22 transfer. Such allocation shall not be considered a sale for the
23 purposes of this section.

24 3. The department may recapture credits from a rural investor
25 that claimed a credit authorized under this section if:

26 (1) The rural fund does not invest sixty percent of its capital
27 investment authority in qualified investments in this state within two
28 years of the credit allowance date, and one hundred percent of its
29 capital investment authority in qualified investments in this state
30 within three years of the credit allowance date;

31 (2) The rural fund fails to maintain qualified investments equal

32 to ninety percent of its capital investment authority from the third
33 anniversary until the sixth anniversary of the credit allowance
34 date. For each year the rural fund fails to maintain such investments,
35 the department may recapture an amount of such year's allowed credits
36 equal to the percentage difference between ninety percent of a rural
37 fund's capital investment authority and the actual amount of qualified
38 investments maintained for such year. For the purposes of this
39 subdivision, a qualified investment is considered maintained even if the
40 qualified investment was sold or repaid so long as the rural fund
41 reinvests an amount equal to the capital returned or recovered by the
42 rural fund from the original investment, exclusive of any profits
43 realized, in other qualified investments in this state within twelve
44 months of the receipt of such capital. Amounts received periodically
45 by a rural fund shall be treated as continually invested in qualified
46 investments if the amounts are reinvested in one or more qualified
47 investments by the end of the following calendar year. A rural fund
48 shall not be required to reinvest capital returned from qualified
49 investments after the fifth anniversary of the credit allowance date,
50 and such qualified investments shall be considered held continuously
51 by the rural fund through the sixth anniversary of the credit allowance
52 date;

53 (3) The rural fund, before exiting the program in accordance
54 with sections 620.3500 to 620.3530, makes a distribution or payment that
55 results in the rural fund having less than ninety percent of its capital
56 investment authority invested in qualified investments in this state; or

57 (4) The rural fund violates the provisions of section 620.3525, in
58 which case the department may recapture an amount equal to the
59 amount of a rural fund's capital investment authority found to be in
60 violation of such provisions.

61 4. Recaptured credits and the related capital investment
62 authority shall revert to the department.

63 5. No recapture shall occur until the rural fund has been given
64 notice of noncompliance and afforded six months from the date of such
65 notice to cure the noncompliance.

620.3525. No eligible business that receives a qualified
2 investment under the provisions of sections 620.3500 to 620.3530, or any
3 affiliates of such eligible businesses, shall directly or indirectly:

4 (1) Own or have the right to acquire an ownership interest in a
5 rural fund or member or affiliate of a rural fund, including, but not
6 limited to, a holder of a capital investment issued by the rural fund; or

7 (2) Loan to or invest in a rural fund or member or affiliate of a
8 rural fund, including, but not limited to, a holder of a capital
9 investment issued by a rural fund, where the proceeds of such loan or
10 investment are directly or indirectly used to fund or refinance the
11 purchase of a capital investment under sections 620.3500 to 620.3530.

 620.3530. 1. Rural funds shall submit a report to the department
2 within the first fifteen business days after the second anniversary of
3 the initial credit allowance date that provides documentation as to the
4 investment of one hundred percent of the purchase price of such
5 capital investment in qualified investments. Such report shall include:

6 (1) The location of each eligible business receiving a qualified
7 investment;

8 (2) Bank statements of such rural fund evidencing each qualified
9 investment;

10 (3) A copy of the written opinion of the department, as provided
11 in subsection 3 of section 620.3515, or evidence that such business was
12 an eligible business at the time of such qualified investment, as
13 applicable;

14 (4) The number of jobs created and jobs retained as a result of
15 qualified investments;

16 (5) The average annual salary of the jobs created and retained
17 as a result of qualified investments; and

18 (6) Such other information as required by the department.

19 2. For all subsequent years, rural funds shall submit an annual
20 report to the department within ninety days of the beginning of the
21 calendar year during the compliance period. The report shall include,
22 but is not limited to, the following:

23 (1) The number of jobs created and jobs retained as a result of
24 qualified investments; and

25 (2) The average annual salary of the jobs created and retained
26 as a result of qualified investments.

27 3. If at any time on or after the sixth anniversary of the credit
28 allowance date a rural fund satisfies the jobs created and jobs retained
29 amounts required in such fund's notice of certification as provided

30 under subsection 4 of section 620.3510, such rural fund shall no longer
31 be subject to regulation under the provisions of sections 620.3500 to
32 620.3530 and may exit the program by providing written notice to the
33 department certifying such rural fund has met its requirements and
34 will be exiting the program.

35 4. A rural fund not meeting the job requirements may apply to
36 the department to exit the program and no longer be subject to the
37 regulation under the provisions of sections 620.3500 to 620.3530 by
38 paying the penalties provided under subsection 5 of this section, as
39 applicable. The department shall respond to the exit application within
40 fifteen days of receipt. In evaluating the exit application, the fact that
41 no credits have been recaptured and that the rural fund has not
42 received a notice of recapture that has not been cured pursuant to
43 subsection 5 of section 620.3520 shall be sufficient evidence to prove
44 that the rural fund is eligible for exit. The department shall not
45 unreasonably deny an exit application submitted under this subsection.
46 If the exit application is denied, the notice shall include the reasons for
47 such determination.

48 5. (1) A rural fund is subject to a penalty in the amount provided
49 under subdivision (2) of this subsection if:

50 (a) The rural fund authorizes a distribution to the rural fund's
51 equity holders in an amount that, when added to all previous
52 distributions to the rural fund's equity holders and any previous
53 penalties under this section, exceeds the fund's investment authority;
54 and

55 (b) The number of jobs created and jobs retained as a result of
56 the rural fund's qualified investments, as reported on the rural fund's
57 reports, is less than the estimated number of jobs created and jobs
58 retained included in the rural fund's application under section
59 620.3510.

60 (2) The amount of the penalty shall be equal to the amount of the
61 authorized distribution multiplied by a fraction:

62 (a) The numerator of which is the estimated number of jobs
63 created and jobs retained included in the rural fund's application
64 under section 620.3510, less the number of jobs created and jobs
65 retained reported in all of the rural fund's reports submitted pursuant
66 to this section; and

67 **(b) The denominator of which is the estimated number of jobs**
68 **created and jobs retained included in the rural fund's application**
69 **under section 620.3510.**

70 **Before making a distribution to the fund's equity holders, the rural**
71 **fund shall deduct the amount of the penalty from the amount otherwise**
72 **authorized to be distributed to the equity holders and pay such penalty**
73 **to the department.**

✓

Unofficial

Bill

Copy