

SECOND REGULAR SESSION

HOUSE BILL NO. 2364

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEARA.

5372L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 620.1878 and 620.1881, RSMo, and to enact in lieu thereof three new sections relating to the quality jobs act.

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

Section A. Sections 620.1878 and 620.1881, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 620.1878, 620.1881, and 620.1883, to read as follows:

620.1878. For the purposes of sections 620.1875 to 620.1890, the following terms shall mean:

(1) "Approval", a document submitted by the department to the qualified company that states the benefits that may be provided by this program;

(2) "Average wage", the new payroll divided by the number of new jobs;

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

(4) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least annually.

Notwithstanding the provisions of this subdivision to the contrary[,] :

(a) For any qualified company that in conjunction with their project is relocating employees from a Missouri county with a higher county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 or the county average wage for their project shall be the county average wage for the county from
18 which the employees are being relocated; **and**

19 **(b) For any megaproject, the county average wage shall be the amount as set forth**
20 **in the definition of megaproject;**

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

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

23 (7) "Employee", a person employed by a qualified company;

24 (8) **"Enhanced tax credits", tax credits that are approved by the department under**
25 **subsection 1 of section 620.1883;**

26 (9) "Full-time employee", an employee of the qualified company that is scheduled to
27 work an average of at least thirty-five hours per week for a twelve-month period, and one for
28 which the qualified company offers health insurance and pays at least fifty percent of such
29 insurance premiums;

30 [(9)] (10) "High-impact project", a qualified company that, within two years from
31 commencement of operations, creates one hundred or more new jobs;

32 [(10)] (11) "Local incentives", the present value of the dollar amount of direct benefit
33 received by a qualified company for a project facility from one or more local political
34 subdivisions, but shall not include loans or other funds provided to the qualified company that
35 must be repaid by the qualified company to the political subdivision;

36 (12) **"Megaproject", a qualified project, defined as any project located in a**
37 **dormant existing automobile manufacturing or assembly facility or within two and**
38 **one-half miles of such facility, that within four years of the date of the approval creates a**
39 **minimum of one hundred new jobs involved in the operations of a company and which:**

40 (a) **Pays a wage equal to or above the mean annual wage for occupation code**
41 **51-0000 (production occupations) in the state of Missouri as published by the United States**
42 **Bureau of Labor Statistics;**

43 (b) **Offers health insurance to all new employees and pays at least fifty percent of**
44 **the premiums;**

45 (c) **Is the subject of a notice of intent filed by the earlier of:**

46 **a. December 31, 2015; and**

47 **b. The date when unemployment rates for the county in which the megaproject is**
48 **located or in the state are less than five percent for twelve consecutive months; and**

49 (d) **Is a manufacturing company, as determined by a regulation promulgated by**
50 **the department under the provisions of section 620.1884 or classified under NAICS codes**
51 **31-33;**

52 [(11)] (13) "NAICS", the 1997 edition of the North American Industry Classification
53 System as prepared by the Executive Office of the President, Office of Management and Budget.
54 Any NAICS sector, subsector, industry group or industry identified in this section shall include
55 its corresponding classification in subsequent federal industry classification systems;

56 [(12)] (14) "New direct local revenue", the present value of the dollar amount of direct
57 net new tax revenues of the local political subdivisions likely to be produced by the project over
58 a ten-year period as calculated by the department, excluding local earnings tax, and net new
59 utility revenues, provided the local incentives include a discount or other direct incentives from
60 utilities owned or operated by the political subdivision;

61 [(13)] (15) "New investment", the purchase or leasing of new tangible assets to be placed
62 in operation at the project facility, which will be directly related to the new jobs;

63 [(14)] (16) "New job", the number of full-time employees located at the project facility
64 that exceeds the project facility base employment less any decrease in the number of full-time
65 employees at related facilities below the related facility base employment. No job that was
66 created prior to the date of the notice of intent shall be deemed a new job. An employee that
67 spends less than fifty percent of the employee's work time at the facility is still considered to be
68 located at a facility if the employee receives his or her directions and control from that facility,
69 is on the facility's payroll, one hundred percent of the employee's income from such employment
70 is Missouri income, and the employee is paid at or above the state average wage;

71 [(15)] (17) "New payroll", the amount of taxable wages of full-time employees,
72 excluding owners, located at the project facility that exceeds the project facility base payroll. If
73 full-time employment at related facilities is below the related facility base employment, any
74 decrease in payroll for full-time employees at the related facilities below that related facility base
75 payroll shall also be subtracted to determine new payroll;

76 [(16)] (18) "Notice of intent", a form developed by the department, completed by the
77 qualified company and submitted to the department which states the qualified company's intent
78 to hire new jobs and request benefits under this program;

79 [(17)] (19) "Percent of local incentives", the amount of local incentives divided by the
80 amount of new direct local revenue;

81 [(18)] (20) "Program", the Missouri quality jobs program provided in sections 620.1875
82 to 620.1890;

83 [(19)] (21) "Project facility", the building used by a qualified company at which the new
84 jobs and new investment will be located. A project facility may include separate buildings that
85 are located within fifteen miles of each other or within the same county such that their purpose
86 and operations are interrelated;

87 [(20)] (22) "Project facility base employment", the greater of the number of full-time
88 employees located at the project facility on the date of the notice of intent or for the
89 twelve-month period prior to the date of the notice of intent, the average number of full-time
90 employees located at the project facility. In the event the project facility has not been in
91 operation for a full twelve-month period, the average number of full-time employees for the
92 number of months the project facility has been in operation prior to the date of the notice of
93 intent;

94 [(21)] (23) "Project facility base payroll", the total amount of taxable wages paid by the
95 qualified company to full-time employees of the qualified company located at the project facility
96 in the twelve months prior to the notice of intent, not including the payroll of the owners of the
97 qualified company unless the qualified company is participating in an employee stock ownership
98 plan. For purposes of calculating the benefits under this program, the amount of base payroll
99 shall increase each year based on an appropriate measure, as determined by the department;

100 [(22)] (24) "Project period", the time period that the benefits are provided to a qualified
101 company;

102 [(23)] (25) "Qualified company", a firm, partnership, joint venture, association, private
103 or public corporation whether organized for profit or not, or headquarters of such entity
104 registered to do business in Missouri that is the owner or operator of a project facility, offers
105 health insurance to all full-time employees of all facilities located in this state, and pays at least
106 fifty percent of such insurance premiums. For the purposes of sections 620.1875 to 620.1890,
107 the term "qualified company" shall not include:

- 108 (a) Gambling establishments (NAICS industry group 7132);
109 (b) Retail trade establishments (NAICS sectors 44 and 45);
110 (c) Food and drinking places (NAICS subsector 722);
111 (d) Public utilities (NAICS 221 including water and sewer services);
112 (e) Any company that is delinquent in the payment of any nonprotested taxes or any
113 other amounts due the state or federal government or any other political subdivision of this state;
114 (f) Any company that has filed for or has publicly announced its intention to file for
115 bankruptcy protection. However, a company that has filed for or has publicly announced its
116 intention to file for bankruptcy between January 1, 2009, and December 31, 2009, may be a
117 qualified company provided that such company:
- 118 a. Certifies to the department that it plans to reorganize and not to liquidate; and
 - 119 b. After its bankruptcy petition has been filed, it produces proof, in a form and at times
120 satisfactory to the department, that it is not delinquent in filing any tax returns or making any
121 payment due to the state of Missouri, including but not limited to all tax payments due after the
122 filing of the bankruptcy petition and under the terms of the plan of reorganization. Any taxpayer

123 who is awarded benefits under this subsection and who files for bankruptcy under Chapter 7 of
124 the United States Bankruptcy Code, Title 11 U.S.C., shall immediately notify the department and
125 shall forfeit such benefits and shall repay the state an amount equal to any state tax credits
126 already redeemed and any withholding taxes already retained;

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

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

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

130 (j) Ethanol distillation or production; or

131 (k) Biodiesel production. Notwithstanding any provision of this section to the contrary,
132 the headquarters or administrative offices of an otherwise excluded business may qualify for
133 benefits if the offices serve a multistate territory. In the event a national, state, or regional
134 headquarters operation is not the predominant activity of a project facility, the new jobs and
135 investment of such headquarters operation is considered eligible for benefits under this section
136 if the other requirements are satisfied;

137 [(24)] **(26)** "Qualified renewable energy sources" shall not be construed to include
138 ethanol distillation or production or biodiesel production; however, it shall include:

139 (a) Open-looped biomass;

140 (b) Close-looped biomass;

141 (c) Solar;

142 (d) Wind;

143 (e) Geothermal; and

144 (f) Hydropower;

145 [(25)] **(27)** "Related company" means:

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

147 (b) An individual, corporation, partnership, trust, or association in control of the
148 qualified company; or

149 (c) Corporations, partnerships, trusts or associations controlled by an individual,
150 corporation, partnership, trust or association in control of the qualified company. As used in this
151 subdivision, "control of a corporation" shall mean ownership, directly or indirectly, of stock
152 possessing at least fifty percent of the total combined voting power of all classes of stock entitled
153 to vote, "control of a partnership or association" shall mean ownership of at least fifty percent
154 of the capital or profits interest in such partnership or association, "control of a trust" shall mean
155 ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal
156 or income of such trust, and ownership shall be determined as provided in Section 318 of the
157 Internal Revenue Code of 1986, as amended;

158 [(26)] **(28)** "Related facility", a facility operated by the qualified company or a related
159 company located in this state that is directly related to the operations of the project facility;

160 [(27)] **(29)** "Related facility base employment", the greater of the number of full-time
161 employees located at all related facilities on the date of the notice of intent or for the
162 twelve-month period prior to the date of the notice of intent, the average number of full-time
163 employees located at all related facilities of the qualified company or a related company located
164 in this state;

165 [(28)] **(30)** "Related facility base payroll", the total amount of taxable wages paid by the
166 qualified company to full-time employees of the qualified company located at a related facility
167 in the twelve months prior to the filing of the notice of intent, not including the payroll of the
168 owners of the qualified company unless the qualified company is participating in an employee
169 stock ownership plan. For purposes of calculating the benefits under this program, the amount
170 of related facility base payroll shall increase each year based on an appropriate measure, as
171 determined by the department;

172 [(29)] **(31)** "Rural area", a county in Missouri with a population less than seventy-five
173 thousand or that does not contain an individual city with a population greater than fifty thousand
174 according to the most recent federal decennial census;

175 [(30)] **(32)** "Small and expanding business project", a qualified company that within two
176 years of the date of the approval creates a minimum of twenty new jobs if the project facility is
177 located in a rural area or a minimum of forty new jobs if the project facility is not located in a
178 rural area and creates fewer than one hundred new jobs regardless of the location of the project
179 facility;

180 [(31)] **(33)** "Tax credits", tax credits issued by the department to offset the state income
181 taxes imposed by chapters 143 and 148, RSMo, or which may be sold or refunded as provided
182 for in this program;

183 [(32)] **(34)** "Technology business project", a qualified company that within two years of
184 the date of the approval creates a minimum of ten new jobs involved in the operations of a
185 company:

186 (a) Which is a technology company, as determined by a regulation promulgated by the
187 department under the provisions of section 620.1884 or classified by NAICS codes;

188 (b) Which owns or leases a facility which produces electricity derived from qualified
189 renewable energy sources, or produces fuel for the generation of electricity from qualified
190 renewable energy sources, but does not include any company that has received the alcohol
191 mixture credit, alcohol credit, or small ethanol producer credit pursuant to 26 U.S.C. Section
192 40 of the tax code in the previous tax year;

193 (c) Which researches, develops, or manufactures power system technology for:
194 aerospace; space; defense; hybrid vehicles; or implantable or wearable medical devices; or

195 (d) Which is a clinical molecular diagnostic laboratory focused on detecting and
196 monitoring infections in immunocompromised patient populations;

197 [(33)] (35) "Withholding tax", the state tax imposed by sections 143.191 to 143.265,
198 RSMo. For purposes of this program, the withholding tax shall be computed using a schedule
199 as determined by the department based on average wages.

620.1881. 1. The department of economic development shall respond within thirty days
2 to a company who provides a notice of intent with either an approval or a rejection of the notice
3 of intent. The department shall give preference to qualified companies and projects targeted at
4 an area of the state which has recently been classified as a disaster area by the federal
5 government. Failure to respond on behalf of the department of economic development shall
6 result in the notice of intent being deemed an approval for the purposes of this section. A
7 qualified company who is provided an approval for a project shall be allowed a benefit as
8 provided in this program in the amount and duration provided in this section. A qualified
9 company may receive additional periods for subsequent new jobs at the same facility after the
10 full initial period if the minimum thresholds are met as set forth in sections 620.1875 to
11 620.1890. There is no limit on the number of periods a qualified company may participate in the
12 program, as long as the minimum thresholds are achieved and the qualified company provides
13 the department with the required reporting and is in proper compliance for this program or other
14 state programs. A qualified company may elect to file a notice of intent to start a new project
15 period concurrent with an existing project period if the minimum thresholds are achieved and
16 the qualified company provides the department with the required reporting and is in proper
17 compliance for this program and other state programs; however, the qualified company may not
18 receive any further benefit under the original approval for jobs created after the date of the new
19 notice of intent, and any jobs created before the new notice of intent may not be included as new
20 jobs for the purpose of benefit calculation in relation to the new approval. When a qualified
21 company has filed and received approval of a notice of intent and subsequently files another
22 notice of intent, the department shall apply the definition of project facility under subdivision
23 [(19)] (21) of section 620.1878 to the new notice of intent as well as all previously approved
24 notices of intent and shall determine the application of the definitions of new job, new payroll,
25 project facility base employment, and project facility base payroll accordingly.

26 2. Notwithstanding any provision of law to the contrary, any qualified company that is
27 awarded benefits under this program may not simultaneously receive tax credits or exemptions
28 under sections 135.100 to 135.150, sections 135.200 to 135.286, section 135.535, or sections
29 135.900 to 135.906, RSMo, at the same project facility. The benefits available to the company

30 under any other state programs for which the company is eligible and which utilize withholding
31 tax from the new jobs of the company must first be credited to the other state program before the
32 withholding retention level applicable under the Missouri quality jobs act will begin to accrue.
33 These other state programs include, but are not limited to, the new jobs training program under
34 sections 178.892 to 178.896, RSMo, the job retention program under sections 178.760 to
35 178.764, RSMo, the real property tax increment allocation redevelopment act, sections 99.800
36 to 99.865, RSMo, or the Missouri downtown and rural economic stimulus act under sections
37 99.915 to 99.980, RSMo. If any qualified company also participates in the new jobs training
38 program in sections 178.892 to 178.896, RSMo, the company shall retain no withholding tax,
39 but the department shall issue a refundable tax credit for the full amount of benefit allowed under
40 this [subdivision] **subsection**. The calendar year annual maximum amount of tax credits which
41 may be issued to a qualifying company that also participates in the new job training program
42 shall be increased by an amount equivalent to the withholding tax retained by that company
43 under the new jobs training program. However, if the combined benefits of the quality jobs
44 program and the new jobs training program exceed the projected state benefit of the project, as
45 determined by the department of economic development through a cost-benefit analysis, the
46 increase in the maximum tax credits shall be limited to the amount that would not cause the
47 combined benefits to exceed the projected state benefit. Any taxpayer who is awarded benefits
48 under this program who knowingly hires individuals who are not allowed to work legally in the
49 United States shall immediately forfeit such benefits and shall repay the state an amount equal
50 to any state tax credits already redeemed and any withholding taxes already retained.

51 3. The types of projects and the amount of benefits to be provided are:

52 (1) Small and expanding business projects: in exchange for the consideration provided
53 by the new tax revenues and other economic stimuli that will be generated by the new jobs
54 created by the program, a qualified company may retain an amount equal to the withholding tax
55 as calculated under subdivision [(33)] (35) of section 620.1878 from the new jobs that would
56 otherwise be withheld and remitted by the qualified company under the provisions of sections
57 143.191 to 143.265, RSMo, for a period of three years from the date the required number of new
58 jobs were created if the average wage of the new payroll equals or exceeds the county average
59 wage or for a period of five years from the date the required number of new jobs were created
60 if the average wage of the new payroll equals or exceeds one hundred twenty percent of the
61 county average wage;

62 (2) Technology business projects: in exchange for the consideration provided by the new
63 tax revenues and other economic stimuli that will be generated by the new jobs created by the
64 program, a qualified company may retain an amount equal to a maximum of five percent of new
65 payroll for a period of five years from the date the required number of jobs were created from

66 the withholding tax of the new jobs that would otherwise be withheld and remitted by the
67 qualified company under the provisions of sections 143.191 to 143.265, RSMo, if the average
68 wage of the new payroll equals or exceeds the county average wage. An additional one-half
69 percent of new payroll may be added to the five percent maximum if the average wage of the
70 new payroll in any year exceeds one hundred twenty percent of the county average wage in the
71 county in which the project facility is located, plus an additional one-half percent of new payroll
72 may be added if the average wage of the new payroll in any year exceeds one hundred forty
73 percent of the average wage in the county in which the project facility is located. The department
74 shall issue a refundable tax credit for any difference between the amount of benefit allowed
75 under this subdivision and the amount of withholding tax retained by the company, in the event
76 the withholding tax is not sufficient to provide the entire amount of benefit due to the qualified
77 company under this subdivision;

78 (3) High impact projects: in exchange for the consideration provided by the new tax
79 revenues and other economic stimuli that will be generated by the new jobs created by the
80 program, a qualified company may retain an amount from the withholding tax of the new jobs
81 that would otherwise be withheld and remitted by the qualified company under the provisions
82 of sections 143.191 to 143.265, RSMo, equal to three percent of new payroll for a period of five
83 years from the date the required number of jobs were created if the average wage of the new
84 payroll equals or exceeds the county average wage of the county in which the project facility is
85 located. For high-impact projects in a facility located within two adjacent counties, the new
86 payroll shall equal or exceed the higher county average wage of the adjacent counties. The
87 percentage of payroll allowed under this subdivision shall be three and one-half percent of new
88 payroll if the average wage of the new payroll in any year exceeds one hundred twenty percent
89 of the county average wage in the county in which the project facility is located. The percentage
90 of payroll allowed under this subdivision shall be four percent of new payroll if the average wage
91 of the new payroll in any year exceeds one hundred forty percent of the county average wage in
92 the county in which the project facility is located. An additional one percent of new payroll may
93 be added to these percentages if local incentives equal between ten percent and twenty-four
94 percent of the new direct local revenue; an additional two percent of new payroll is added to
95 these percentages if the local incentives equal between twenty-five percent and forty-nine percent
96 of the new direct local revenue; or an additional three percent of payroll is added to these
97 percentages if the local incentives equal fifty percent or more of the new direct local revenue.
98 The department shall issue a refundable tax credit for any difference between the amount of
99 benefit allowed under this subdivision and the amount of withholding tax retained by the
100 company, in the event the withholding tax is not sufficient to provide the entire amount of benefit
101 due to the qualified company under this subdivision;

102 (4) Job retention projects: a qualified company may receive a tax credit for the retention
103 of jobs in this state, provided the qualified company and the project meets all of the following
104 conditions:

105 (a) For each of the twenty-four months preceding the year in which application for the
106 program is made the qualified company must have maintained at least one thousand full-time
107 employees at the employer's site in the state at which the jobs are based, and the average wage
108 of such employees must meet or exceed the county average wage;

109 (b) The qualified company retained at the project facility the level of full-time employees
110 that existed in the taxable year immediately preceding the year in which application for the
111 program is made;

112 (c) The qualified company is considered to have a significant statewide effect on the
113 economy, and has been determined to represent a substantial risk of relocation from the state by
114 the quality jobs advisory task force established in section 620.1887; provided, however, until
115 such time as the initial at-large members of the quality jobs advisory task force are appointed,
116 this determination shall be made by the director of the department of economic development;

117 (d) The qualified company in the project facility will cause to be invested a minimum
118 of seventy million dollars in new investment prior to the end of two years or will cause to be
119 invested a minimum of thirty million dollars in new investment prior to the end of two years and
120 maintain an annual payroll of at least seventy million dollars during each of the years for which
121 a credit is claimed; and

122 (e) The local taxing entities shall provide local incentives of at least fifty percent of the
123 new direct local revenues created by the project over a ten-year period. The quality jobs advisory
124 task force may recommend to the department of economic development that appropriate
125 penalties be applied to the company for violating the agreement. The amount of the job retention
126 credit granted may be equal to up to fifty percent of the amount of withholding tax generated by
127 the full-time jobs at the project facility for a period of five years. The calendar year annual
128 maximum amount of tax credit that may be issued to any qualified company for a job retention
129 project or combination of job retention projects shall be seven hundred fifty thousand dollars per
130 year, but the maximum amount may be increased up to one million dollars if such action is
131 proposed by the department and approved by the quality jobs advisory task force established in
132 section 620.1887; provided, however, until such time as the initial at-large members of the
133 quality jobs advisory task force are appointed, this determination shall be made by the director
134 of the department of economic development. In considering such a request, the task force shall
135 rely on economic modeling and other information supplied by the department when requesting
136 the increased limit on behalf of the job retention project. In no event shall the total amount of
137 all tax credits issued for the entire job retention program under this subdivision exceed three

138 million dollars annually. Notwithstanding the above, no tax credits shall be issued for job
139 retention projects approved by the department after August 30, 2013;

140 (5) Small business job retention and flood survivor relief: a qualified company may
141 receive a tax credit under sections 620.1875 to 620.1890 for the retention of jobs and flood
142 survivor relief in this state for each job retained over a three-year period, provided that:

143 (a) The qualified company did not receive any state or federal benefits, incentives, or tax
144 relief or abatement in locating its facility in a flood plain;

145 (b) The qualified company and related companies have fewer than one hundred
146 employees at the time application for the program is made;

147 (c) The average wage of the qualified company's and related companies' employees must
148 meet or exceed the county average wage;

149 (d) All of the qualified company's and related companies' facilities are located in this
150 state;

151 (e) The facilities at the primary business site in this state have been directly damaged by
152 floodwater rising above the level of a five hundred year flood at least two years, but fewer than
153 eight years, prior to the time application is made;

154 (f) The qualified company made significant efforts to protect the facilities prior to any
155 impending danger from rising floodwaters;

156 (g) For each year it receives tax credits under sections 620.1875 to 620.1890, the
157 qualified company and related companies retained, at the company's facilities in this state, at
158 least the level of full-time, year-round employees that existed in the taxable year immediately
159 preceding the year in which application for the program is made; and

160 (h) In the years it receives tax credits under sections 620.1875 to 620.1890, the company
161 cumulatively invests at least two million dollars in capital improvements in facilities and
162 equipment located at such facilities that are not located within a five hundred year flood plain
163 as designated by the Federal Emergency Management Agency, and amended from time to time.
164 The amount of the small business job retention and flood survivor relief credit granted may be
165 equal to up to one hundred percent of the amount of withholding tax generated by the full-time
166 jobs at the project facility for a period of three years. The calendar year annual maximum
167 amount of tax credit that may be issued to any qualified company for a small business job
168 retention and survivor relief project shall be two hundred fifty thousand dollars per year, but the
169 maximum amount may be increased up to five hundred thousand dollars if such action is
170 proposed by the department and approved by the quality jobs advisory task force established in
171 section 620.1887. In considering such a request, the task force shall rely on economic modeling
172 and other information supplied by the department when requesting an increase in the limit on
173 behalf of the small business job retention and flood survivor relief project. In no event shall the

174 total amount of all tax credits issued for the entire small business job retention and flood survivor
175 relief program under this subdivision exceed five hundred thousand dollars annually.
176 Notwithstanding the provisions of this subdivision to the contrary, no tax credits shall be issued
177 for small business job retention and flood survivor relief projects approved by the department
178 after August 30, 2010;

179 **(6) Megaprojects: in exchange for the consideration provided by the new tax**
180 **revenues and other economic stimuli that will be generated by the new jobs created by the**
181 **program, a qualified project may retain an amount equal to a maximum of four percent**
182 **of new payroll tax revenues from new jobs created for a period of five years from the date**
183 **the required number of jobs were created from the withholding tax of the new jobs that**
184 **would otherwise be withheld and remitted by the qualified company under the provisions**
185 **of sections 143.191 to 143.265. An additional one percent of new payroll may be added to**
186 **these percentages if local incentives equal between ten percent and twenty-four percent of**
187 **the new direct local revenue; an additional two percent of new payroll is added to these**
188 **percentages if the local incentives equal between twenty-five percent and forty-nine percent**
189 **of the new direct local revenue; or an additional three percent of payroll is added to these**
190 **percentages if the local incentives equal fifty percent or more of the new direct local**
191 **revenue. The department shall issue a refundable tax credit for any difference between the**
192 **amount of benefit allowed under this subdivision and the amount of withholding tax**
193 **retained by the qualified company, in the event the withholding tax is not sufficient to**
194 **provide the entire amount of benefit due to the qualified company under this subdivision.**

195 4. The qualified company shall provide an annual report of the number of jobs and such
196 other information as may be required by the department to document the basis for the benefits
197 of this program. The department may withhold the approval of any benefits until it is satisfied
198 that proper documentation has been provided, and shall reduce the benefits to reflect any
199 reduction in full-time employees or new payroll. Upon approval by the department, the qualified
200 company may begin the retention of the withholding taxes when it reaches the minimum number
201 of new jobs and the average wage exceeds the county average wage. Tax credits, if any, may be
202 issued upon satisfaction by the department that the qualified company has exceeded the county
203 average wage and the minimum number of new jobs. In such annual report, if the average wage
204 is below the county average wage, the qualified company has not maintained the employee
205 insurance as required, or if the number of new jobs is below the minimum, the qualified
206 company shall not receive tax credits or retain the withholding tax for the balance of the benefit
207 period. In the case of a qualified company that initially filed a notice of intent and received an
208 approval from the department for high- impact benefits and the minimum number of new jobs
209 in an annual report is below the minimum for high-impact projects, the company shall not

210 receive tax credits for the balance of the benefit period but may continue to retain the
211 withholding taxes if it otherwise meets the requirements of a small and expanding business under
212 this program.

213 5. The maximum calendar year annual tax credits issued for the entire program,
214 **excluding megaprojects**, shall not exceed eighty million dollars. Notwithstanding any
215 provision of law to the contrary, the maximum annual tax credits authorized under section
216 135.535, RSMo, are hereby reduced from ten million dollars to eight million dollars, with the
217 balance of two million dollars transferred to this program. **The maximum calendar year**
218 **annual tax credits for megaprojects shall not exceed eight million dollars.** There shall be
219 no limit on the amount of withholding taxes that may be retained by approved companies under
220 this program.

221 6. The department shall allocate the annual tax credits based on the date of the approval,
222 reserving such tax credits based on the department's best estimate of new jobs and new payroll
223 of the project, and the other factors in the determination of benefits of this program. However,
224 the annual issuance of tax credits is subject to the annual verification of the actual new payroll.
225 **Except as provided in subdivision (6) of subsection 3 of this section:**

226 (1) The allocation of tax credits for the period assigned to a project shall expire if, within
227 [two] **four** years from the date of commencement of operations, or approval if applicable, the
228 minimum thresholds have not been achieved[.] ;

229 (2) The qualified company may retain authorized amounts from the withholding tax
230 under this section once the minimum new jobs thresholds are met for the duration of the project
231 period[.] ;

232 (3) No benefits shall be provided under this program until the qualified company meets
233 the minimum new jobs thresholds[.] ;

234 (4) In the event the qualified company does not meet the minimum new job threshold,
235 the qualified company may submit a new notice of intent or the department may provide a new
236 approval for a new project of the qualified company at the project facility or other facilities.

237 7. For a qualified company with flow-through tax treatment to its members, partners, or
238 shareholders, the tax credit shall be allowed to members, partners, or shareholders in proportion
239 to their share of ownership on the last day of the qualified company's tax period.

240 8. Tax credits may be claimed against taxes otherwise imposed by chapters 143 and 148,
241 RSMo, and may not be carried forward but shall be claimed within one year of the close of the
242 taxable year for which they were issued, except as provided under subdivision (4) of subsection
243 3 of this section.

244 9. Tax credits authorized by this section may be transferred, sold, or assigned by filing
245 a notarized endorsement thereof with the department that names the transferee, the amount of

246 tax credit transferred, and the value received for the credit, as well as any other information
247 reasonably requested by the department.

248 10. Prior to the issuance of tax credits, the department shall verify through the
249 department of revenue, or any other state department, that the tax credit applicant does not owe
250 any delinquent income, sales, or use tax or interest or penalties on such taxes, or any delinquent
251 fees or assessments levied by any state department and through the department of insurance,
252 financial institutions and professional registration that the applicant does not owe any delinquent
253 insurance taxes. Such delinquency shall not affect the authorization of the application for such
254 tax credits, except that at issuance credits shall be first applied to the delinquency and any
255 amount issued shall be reduced by the applicant's tax delinquency. If the department of revenue
256 or the department of insurance, financial institutions and professional registration, or any other
257 state department, concludes that a taxpayer is delinquent after June fifteenth but before July first
258 of any year and the application of tax credits to such delinquency causes a tax deficiency on
259 behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the
260 deficiency in which interest, penalties, and additions to tax shall be tolled. After applying all
261 available credits toward a tax delinquency, the administering agency shall notify the appropriate
262 department and that department shall update the amount of outstanding delinquent tax owed by
263 the applicant. If any credits remain after satisfying all insurance, income, sales, and use tax
264 delinquencies, the remaining credits shall be issued to the applicant, subject to the restrictions
265 of other provisions of law.

266 11. Except as provided under subdivision (4) of subsection 3 of this section, the director
267 of revenue shall issue a refund to the qualified company to the extent that the amount of credits
268 allowed in this section exceeds the amount of the qualified company's income tax.

269 12. An employee of a qualified company will receive full credit for the amount of tax
270 withheld as provided in section 143.211, RSMo.

271 13. If any provision of sections 620.1875 to 620.1890 or application thereof to any
272 person or circumstance is held invalid, the invalidity shall not affect other provisions or
273 application of these sections which can be given effect without the invalid provisions or
274 application, and to this end, the provisions of sections 620.1875 to 620.1890 are hereby declared
275 severable.

**620.1883. 1. A qualified company who files a notice of intent for a megaproject, in
2 exchange for the consideration provided by new tax revenues and other economic stimuli
3 that will be generated from the new jobs created by the megaproject, may apply to the
4 department for approval of the issuance of enhanced tax credits equal the projected new
5 annual payroll of the qualified company attributable to employees or such lesser amount
6 as may be approved by the department. A qualified company seeking approval of**

7 enhanced tax credits for a megaproject shall submit an application to the department. The
8 department shall not approve any megaproject after December 31, 2011. The department
9 shall not approve any credits for megaprojects to be issued prior to January 1, 2013, and
10 in no event shall the department authorize more than eight million dollars to be issued
11 annually for all megaprojects. The total amount of credits issued under this section shall
12 not exceed fifty million dollars.

13 2. In considering applications for approval of enhanced tax credits for
14 megaprojects, the department may approve an application if:

15 (1) The qualified company's project is financially sound and the qualified company
16 has adequately demonstrated an ability to successfully undertake and complete the
17 megaproject. This determination shall be supported by a professional third-party market
18 feasibility analysis conducted on behalf of the state by a firm with direct experience with
19 the industry of the proposed megaproject, and by a professional third-party financial
20 analysis of the qualified company's ability to complete the project;

21 (2) Local taxing entities are providing a significant level of incentives for the
22 megaproject relative to the projected new local tax revenues created by the megaproject;

23 (3) There is at least one other state or foreign country that the qualified company
24 verifies is being considered for the project, and receiving megaproject tax credits is a major
25 factor in the qualified company's decision to go forward with the project and not receiving
26 the credit will result in the company not creating new jobs in Missouri;

27 (4) The completion of the megaproject will serve an essential public municipal
28 purpose by creating a substantial number of new jobs for citizens, increasing their
29 purchasing power, improving their living conditions, and relieving the demand for
30 unemployment and welfare assistance thereby promoting the economic development of the
31 municipality and the state;

32 (5) The creation of new jobs will assist the state in providing the services needed
33 to protect the health, safety, and social and economic well-being of the citizens of the state;

34 (6) The qualified company proposes that a minimum of fifty million dollars in new
35 capital investment be made and five hundred new jobs be created; and

36 (7) The company provides evidence of commitments for financing such new capital
37 investment prior to approval of the project.

38 3. The department shall also consider the following factors in determining the
39 amount of enhanced tax credits to be approved:

40 (1) The creditworthiness of the qualified company and the likelihood that it will
41 fulfill the required commitments under the contract;

42 (2) The projected net fiscal benefit to the state of the project, after deducting all
43 incentives and costs paid by the state;

44 (3) The proposed wages, and growth potential of the qualified company;

45 (4) The potential multiplier effect of the project, and other like factors;

46 (5) The amount of the gap in available debt and equity sources available to the
47 company in order to complete the capital investment in the project; and

48 (6) Whether the project would occur, but for the award of enhanced tax credits.

49 4. Prior to final approval of an application and designation of all or any portion of
50 the projected tax credits as enhanced tax credits, a binding contract shall be executed
51 between the qualified company and the department which shall include, but not be limited
52 to:

53 (1) The qualified company's obligation to construct or renovate a facility within five
54 years from the date of approval;

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

58 (3) The amount of tax credits which shall be designated as enhanced tax credits;

59 (4) Repayment provisions, if applicable; and

60 (5) Recapture provisions applicable in the event of default or noncompliance by the
61 qualified company, which shall define an event of default or noncompliance as a failure to
62 meet requirements under this section or contractual thresholds within prescribed terms.
63 An event of default or noncompliance shall cause a full or prorata repayment of the
64 enhanced tax credits, plus interest equal to the prime rate plus three percent, provided,
65 however, that the recapture provisions shall be applied solely against the qualified
66 company and any entity related to the qualified company, and the recapture provisions
67 shall not be applied against any third-party lender transferee where the net proceeds of the
68 sale or transfer of enhanced tax credits are applied to the cost of constructing, renovating
69 or operating the megaproject.

70 5. Upon entering into a contract with a qualified company under the provisions of
71 subsection 4 of this section, the director may issue refundable enhanced tax credits in an
72 amount not to exceed the total amount of projected withholding taxes of new jobs at the
73 project facility over a period not to exceed eight years from the date such company is
74 projected to meet its job, payroll, and capital investment. The director shall award the
75 minimum amount of enhanced tax credits necessary to obtain the company's commitment
76 to initiate a megaproject. If the qualified company is unable to obtain sufficient financing
77 to complete the megaproject, the director may award enhanced tax credits, but shall

78 require that the face amount of such enhanced tax credits be repaid to the state general
79 revenue fund in accordance with the terms of the contract executed under the provisions
80 of subsection 4 of this section, with a rate of interest, terms, and other conditions to be
81 determined at the discretion of the director. If the director determines that the qualified
82 company would locate the megaproject in another state, but for the award of enhanced tax
83 credits, the director may award enhanced tax credits with no requirement that repayment
84 be made.

85 6. Enhanced tax credits issued under this section may be claimed against the tax
86 imposed by chapter 143, excluding withholding tax imposed by sections 143.191 to 143.265.
87 For qualified companies with flow-through tax treatment of its members, partners, or
88 shareholders, the credit shall be allowed to members, partners, or shareholders in
89 proportion to their share of ownership on the last day of the qualified company's tax
90 period. The director of revenue shall issue a refund to a qualified company to the extent
91 the amount of credits allowed in this section exceeds the amount of the qualified company's
92 income tax liability in the year redemption is authorized. An owner of enhanced tax
93 credits issued under this section shall not be required to have any Missouri income tax
94 liability in order to redeem such enhanced tax credits and receive a refund. The director
95 of revenue shall prepare a form to permit the owner of such enhanced tax credits to obtain
96 a refund.

97 7. Certificates of enhanced tax credits authorized under this section may be
98 transferred, sold, or assigned by filing a notarized endorsement thereof with the
99 department that names the transferee, the amount of enhanced tax credit transferred, and
100 the value received for the enhanced credit, as well as any other information reasonably
101 requested by the department. Upon such transfer, sale, or assignment, the transferee shall
102 be the owner of such tax credits entitled to claim the enhanced tax credits or any refunds
103 with respect thereto issued to the qualified company. Enhanced tax credits may not be
104 carried forward past the year of issuance. Enhanced tax credits authorized by this section
105 may not be pledged or used to secure any bonds or other indebtedness issued by the state
106 or any political subdivision of the state. Once such enhanced tax credits have been issued,
107 nothing shall prohibit the owner of the tax credits from pledging the enhanced tax credits
108 to any lender or other third party.

109 8. Any qualified company issued enhanced tax credits under this section shall
110 provide an annual report to the department and the house and senate appropriations'
111 committees of the number of new jobs located and created at the megaproject, the new
112 annual payroll of such new jobs, and such other information as may be required by the
113 department to document the basis for benefits under this section. Except as provided in

114 subdivision (5) of subsection 4 of this section, the department may withhold the approval
115 of the annual issuance of any tax credits until it is satisfied that proper documentation has
116 been provided, and shall reduce the tax credits to reflect any reduction in new payroll. If
117 the department determines the average wage is below the county average wage, or the
118 qualified company has not maintained employee health insurance as required, except as
119 provided in subdivision (6) of subsection 3 of this section, the qualified company shall not
120 receive tax credits for that year.

121 **9. Any action brought in any court contesting the approval of a megaproject and**
122 **the issuance of the enhanced tax credits, or any other action undertaken under this section**
123 **related to such megaproject, shall be filed within ninety days following approval of the**
124 **megaproject by the department.**

125 **10. Records and documents relating to a supplemental application for a proposed**
126 **megaproject shall be deemed closed records until such time as such supplemental**
127 **application has been approved. Provisions of this subsection to the contrary**
128 **notwithstanding, records containing business plan information which may endanger the**
129 **competitiveness of the qualified company shall remain closed.**

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