

House _____ Amendment NO. _____

Offered By

1 AMEND Senate Substitute for Senate Committee Substitute for Senate Bill No. 549, Page 8,
2 Section 620.809, Line 241, by inserting immediately after all of said section and line the following:

3
4 "620.2005. As used in sections 620.2000 to 620.2020, the following terms mean:

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

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

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

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

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

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

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

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

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

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

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

5 (10) "NAICS" or "NAICS industry classification", the classification provided by the most
6 recent edition of the North American Industry Classification System as prepared by the Executive
7 Office of the President, Office of Management and Budget;

8 (11) "New capital investment", shall include costs incurred by the qualified company at the
9 project facility after acceptance by the qualified company of the proposal for benefits from the
10 department or the approval notice of intent, whichever occurs first, for real or personal property, and
11 may include the value of finance or capital leases for real or personal property for the term of such
12 lease at the project facility executed after acceptance by the qualified company of the proposal for
13 benefits from the department or the approval of the notice of intent;

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

19 (13) "New job", the number of full-time employees located at the project facility that
20 exceeds the project facility base employment less any decrease in the number of full-time employees
21 at related facilities below the related facility base employment. No job that was created prior to the
22 date of the notice of intent shall be deemed a new job;

23 (14) "New payroll", the amount of wages paid for all new jobs, located at the project facility
24 during the qualified company's tax year that exceeds the project facility base payroll;

25 (15) "Notice of intent", a form developed by the department and available online, completed
26 by the qualified company, and submitted to the department stating the qualified company's intent to
27 request benefits under this program;

28 (16) "Percent of local incentives", the amount of local incentives divided by the amount of
29 new direct local revenue;

30 (17) "Program", the Missouri works program established in sections 620.2000 to 620.2020;

31 (18) "Project facility", the building or buildings used by a qualified company at which new
32 or retained jobs and any new capital investment are or will be located. A project facility may
33 include separate buildings located within sixty miles of each other such that their purpose and
34 operations are interrelated; provided that where the buildings making up the project facility are not
35 located within the same county, the average wage of the new payroll shall exceed the applicable
36 percentage of the highest county average wage among the counties in which the buildings are
37 located. Upon approval by the department, a subsequent project facility may be designated if the
38 qualified company demonstrates a need to relocate to the subsequent project facility at any time
39 during the project period;

40 (19) "Project facility base employment", the greater of the number of full-time employees
41 located at the project facility on the date of the notice of intent or, for the twelve-month period prior
42 to the date of the notice of intent, the average number of full-time employees located at the project
43 facility. In the event the project facility has not been in operation for a full twelve-month period,
44 the average number of full-time employees for the number of months the project facility has been in
45 operation prior to the date of the notice of intent;

46 (20) "Project facility base payroll", the annualized payroll for the project facility base
47 employment or the total amount of wages paid by the qualified company to full-time employees of
48 the qualified company located at the project facility in the twelve months prior to the notice of

1 intent. For purposes of calculating the benefits under this program, the amount of base payroll shall
 2 increase each year based on an appropriate measure, as determined by the department;

3 (21) "Project period", the time period within which benefits are awarded to a qualified
 4 company or within which the qualified company is obligated to perform under an agreement with
 5 the department, whichever is greater;

6 (22) "Projected net fiscal benefit", the total fiscal benefit to the state less any state benefits
 7 offered to the qualified company, as determined by the department;

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

14 (a) Gambling establishments (NAICS industry group 7132);

15 (b) Store front consumer-based retail trade establishments (under NAICS sectors 44 and
 16 45), except with respect to any company headquartered in this state with a majority of its full-time
 17 employees engaged in operations not within the NAICS codes specified in this subdivision;

18 (c) Food and drinking places (NAICS subsector 722);

19 (d) Public utilities (NAICS 221 including water and sewer services);

20 (e) Any company that is delinquent in the payment of any nonprotested taxes or any other
 21 amounts due the state or federal government or any other political subdivision of this state;

22 (f) Any company requesting benefits for retained jobs that has filed for or has publicly
 23 announced its intention to file for bankruptcy protection. However, a company that has filed for or
 24 has publicly announced its intention to file for bankruptcy may be a qualified company provided
 25 that such company:

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

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

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

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

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

38 (j) Ethanol distillation or production;

39 (k) Biodiesel production; or

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

41
 42 Notwithstanding any provision of this section to the contrary, the headquarters, administrative
 43 offices, or research and development facilities of an otherwise excluded business may qualify for
 44 benefits if the offices or facilities serve a multistate territory. In the event a national, state, or
 45 regional headquarters operation is not the predominant activity of a project facility, the jobs and
 46 investment of such operation shall be considered eligible for benefits under this section if the other
 47 requirements are satisfied;

48 (24) "Related company", shall mean:

1 (a) A corporation, partnership, trust, or association controlled by the qualified company;
 2 (b) An individual, corporation, partnership, trust, or association in control of the qualified
 3 company; or

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

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

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

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

15 (25) "Related facility", a facility operated by the qualified company or a related company
 16 located in this state that is directly related to the operations of the project facility or in which
 17 operations substantially similar to the operations of the project facility are performed;

18 (26) "Related facility base employment", the greater of the number of full-time employees
 19 located at all related facilities on the date of the notice of intent or, for the twelve-month period
 20 prior to the date of the notice of intent, the average number of full-time employees located at all
 21 related facilities of the qualified company or a related company located in this state;

22 (27) "Related facility base payroll", the annualized payroll of the related facility base
 23 payroll or the total amount of taxable wages paid by the qualified company to full-time employees
 24 of the qualified company located at a related facility in the twelve months prior to the filing of the
 25 notice of intent. For purposes of calculating the benefits under this program, the amount of related
 26 facility base payroll shall increase each year based on an appropriate measure, as determined by the
 27 department;

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

31 (29) "Tax credits", tax credits issued by the department to offset the state taxes imposed by
 32 chapters 143 and 148, or which may be sold [~~or refunded~~] as provided for in this program;

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

36 (31) This section is subject to the provisions of section 196.1127.

37 620.2010. 1. In exchange for the consideration provided by the new tax revenues and other
 38 economic stimuli that will be generated by the new jobs created, a qualified company may, for a
 39 period of five years from the date the new jobs are created, or for a period of six years from the date
 40 the new jobs are created if the qualified company is an existing Missouri business, retain an amount
 41 equal to the withholding tax as calculated under subdivision (30) of section 620.2005 from the new
 42 jobs that would otherwise be withheld and remitted by the qualified company under the provisions
 43 of sections 143.191 to 143.265 if:

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

46 (2) The qualified company creates two or more new jobs at a project facility located in a
 47 rural area, the average wage of the new payroll equals or exceeds ninety percent of the county
 48 average wage, and the qualified company commits to making at least one hundred thousand dollars

1 of new capital investment at the project facility within two years; or

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

7 2. In addition to any benefits available under subsection 1 of this section, the department
8 may award a qualified company that satisfies subdivision (1) of subsection 1 of this section
9 additional tax credits, issued each year for a period of five years from the date the new jobs are
10 created, or for a period of six years from the date the new jobs are created if the qualified company
11 is an existing Missouri business, in an amount equal to or less than six percent of new payroll;
12 provided that in no event may the total amount of benefits awarded to a qualified company under
13 this section exceed nine percent of new payroll in any calendar year. The amount of tax credits
14 awarded to a qualified company under this subsection shall not exceed the projected net fiscal
15 benefit to the state, as determined by the department, and shall not exceed the least amount
16 necessary to obtain the qualified company's commitment to initiate the project. In determining the
17 amount of tax credits to award to a qualified company under this subsection, the department shall
18 consider the following factors:

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

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

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

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

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

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

29 (7) The percent of local incentives committed.

30 3. Upon approval of a notice of intent to receive tax credits under subsections 2 and 5 of this
31 section, the department and the qualified company shall enter into a written agreement covering the
32 applicable project period. The agreement shall specify, at a minimum:

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

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

38 (3) Clawback provisions, as may be required by the department; and

39 (4) Any other provisions the department may require.

40 4. In lieu of the benefits available under sections 1 and 2 of this section, and in exchange for
41 the consideration provided by the new tax revenues and other economic stimuli that will be
42 generated by the new jobs created by the program, a qualified company may, for a period of five
43 years from the date the new jobs are created, or for a period of six years from the date the new jobs
44 are created if the qualified company is an existing Missouri business, retain an amount equal to the
45 withholding tax as calculated under subdivision (30) of section 620.2005 from the new jobs that
46 would otherwise be withheld and remitted by the qualified company under the provisions of sections
47 143.191 to 143.265 equal to:

48 (1) Six percent of new payroll for a period of five years from the date the required number

1 of new jobs were created if the qualified company creates one hundred or more new jobs and the
 2 average wage of the new payroll equals or exceeds one hundred twenty percent of the county
 3 average wage of the county in which the project facility is located; or

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

8
 9 ~~[The department shall issue a refundable tax credit for]~~ Any difference between the amount of
 10 benefit allowed under this subsection and the amount of withholding tax retained by the company,
 11 ~~[in the event the withholding tax is not sufficient to provide the entire amount of benefit due to the~~
 12 ~~qualified company under this subsection]~~ shall not be refunded.

13 5. In addition to the benefits available under subsection 4 of this section, the department
 14 may award a qualified company that satisfies the provisions of subsection 4 of this section
 15 additional tax credits, issued each year for a period of five years from the date the new jobs are
 16 created, or for a period of six years from the date the new jobs are created if the qualified company
 17 is an existing Missouri business, in an amount equal to or less than three percent of new payroll;
 18 provided that in no event may the total amount of benefits awarded to a qualified company under
 19 this section exceed nine percent of new payroll in any calendar year. The amount of tax credits
 20 awarded to a qualified company under this subsection shall not exceed the projected net fiscal
 21 benefit to the state, as determined by the department, and shall not exceed the least amount
 22 necessary to obtain the qualified company's commitment to initiate the project. In determining the
 23 amount of tax credits to award to a qualified company under this subsection, the department shall
 24 consider the factors provided under subsection 2 of this section.

25 6. No benefits shall be available under this section for any qualified company that has
 26 performed significant, project-specific site work at the project facility, purchased machinery or
 27 equipment related to the project, or has publicly announced its intention to make new capital
 28 investment at the project facility prior to receipt of a proposal for benefits under this section or
 29 approval of its notice of intent, whichever occurs first."; and

30
 31 Further amend said bill, Page 9, Section 620.2020, Line 40, by deleting all of said line and inserting
 32 in lieu thereof the following:

33
 34 "but the department shall issue a ~~[refundable]~~ nonrefundable tax credit for the ~~[full]~~ amount of"";
 35 and

36
 37 Further amend said bill and section, Page 12, Lines 144-146, by deleting all of said lines and
 38 inserting in lieu thereof the following:

39
 40 "11. ~~[The director of revenue shall issue a refund to the qualified company to the extent~~
 41 ~~that]~~ The amount of tax credits allowed under this program that exceeds the amount of the qualified
 42 company's tax liability under chapter 143 or 148 shall not be refunded."; and

43
 44 Further amend said bill by amending the title, enacting clause, and intersectional references
 45 accordingly.