

FIRST REGULAR SESSION

HOUSE BILL NO. 255

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FITZWATER.

0955H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 620.2010 and 620.2020, RSMo, and to enact in lieu thereof two new sections relating to the Missouri works program.

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

Section A. Sections 620.2010 and 620.2020, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 620.2010 and 620.2020, to read as follows:

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

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

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

(3) The qualified company creates two or more new jobs at a project facility located within a zone designated under sections 135.950 to 135.963, the average wage of the new payroll equals or exceeds eighty percent of the county average wage, and the qualified company commits

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 to making at least one hundred thousand dollars in new capital investment at the project facility
18 within two years of approval.

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

- 31 (1) The significance of the qualified company's need for program benefits;
- 32 (2) The amount of projected net fiscal benefit to the state of the project and the period
33 in which the state would realize such net fiscal benefit;
- 34 (3) The overall size and quality of the proposed project, including the number of new
35 jobs, new capital investment, proposed wages, growth potential of the qualified company, the
36 potential multiplier effect of the project, and similar factors;
- 37 (4) The financial stability and creditworthiness of the qualified company;
- 38 (5) The level of economic distress in the area;
- 39 (6) An evaluation of the competitiveness of alternative locations for the project facility,
40 as applicable; and
- 41 (7) The percent of local incentives committed.

42 3. Upon approval of a notice of intent to receive tax credits under ~~[subsections]~~
43 **subsection 2 ~~and~~, 5, or 6** of this section, the department and the qualified company shall enter
44 into a written agreement covering the applicable project period. The agreement shall specify,
45 at a minimum:

- 46 (1) The committed number of new jobs, new payroll, and new capital investment for
47 each year during the project period;
- 48 (2) The date or time period during which the tax credits shall be issued, which may be
49 immediately or over a period not to exceed two years from the date of approval of the notice of
50 intent;
- 51 (3) Clawback provisions, as may be required by the department; ~~and~~

52 (4) **Financial guarantee provisions as may be required by the department.**
53 **Financial guarantee provisions shall be required by the department for tax credits**
54 **awarded under subsection 6 of this section; and**

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

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

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

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

72

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

77 5. In addition to the benefits available under subsection 4 of this section, the department
78 may award a qualified company that satisfies the provisions of subsection 4 of this section
79 additional tax credits, issued each year for a period of five years from the date the new jobs are
80 created, or for a period of six years from the date the new jobs are created if the qualified
81 company is an existing Missouri business, in an amount equal to or less than three percent of
82 new payroll; provided that in no event may the total amount of benefits awarded to a qualified
83 company under this section exceed nine percent of new payroll in any calendar year. The amount
84 of tax credits awarded to a qualified company under this subsection shall not exceed the
85 projected net fiscal benefit to the state, as determined by the department, and shall not exceed
86 the least amount necessary to obtain the qualified company's commitment to initiate the project.

87 In determining the amount of tax credits to award to a qualified company under this subsection,
88 the department shall consider the factors provided under subsection 2 of this section.

89 **6. In lieu of the benefits under subsections 1, 2, 4, and 5 of this section and in**
90 **exchange for the consideration provided by the new tax revenues and other economic**
91 **stimuli to be generated by the new jobs and new capital investment created by the**
92 **program, the department may award a qualified company that satisfies subdivision (1) of**
93 **subsection 1 of this section a tax credit, issued within one year following the qualified**
94 **company's acceptance of the department's proposal for benefits, in an amount equal to or**
95 **less than nine percent of new payroll. The amount of tax credit awarded to a qualified**
96 **company under this subsection shall not exceed the projected net fiscal benefit to the state,**
97 **as determined by the department, and shall not exceed the least amount necessary to obtain**
98 **the qualified company's commitment to initiate the project. In determining the amount of**
99 **the tax credit to award to a qualified company under this subsection, the department shall**
100 **consider the factors provided under subsection 2 of this section and the qualified**
101 **company's commitment to new capital investments and new job creation in the state for**
102 **a period no shorter than ten years.**

103 **7.** No benefits shall be available under this section for any qualified company that has
104 performed significant, project-specific site work at the project facility, purchased machinery or
105 equipment related to the project, or has publicly announced its intention to make new capital
106 investment at the project facility prior to receipt of a proposal for benefits under this section or
107 approval of its notice of intent, whichever occurs first.

620.2020. 1. The department shall respond to a written request, by or on behalf of a
2 qualified company, for a proposed benefit award under the provisions of this program within five
3 business days of receipt of such request. Such response shall contain either a proposal of
4 benefits for the qualified company, or a written response refusing to provide such a proposal and
5 stating the reasons for such refusal. A qualified company that intends to seek benefits under the
6 program shall submit to the department a notice of intent. The department shall respond within
7 thirty days to a notice of intent with an approval or a rejection, provided that the department may
8 withhold approval or provide a contingent approval until it is satisfied that proper documentation
9 of eligibility has been provided. Failure to respond on behalf of the department shall result in
10 the notice of intent being deemed approved. A qualified company receiving approval for
11 program benefits may receive additional benefits for subsequent new jobs at the same facility
12 after the full initial project period if the applicable minimum job requirements are met. There
13 shall be no limit on the number of project periods a qualified company may participate in the
14 program, and a qualified company may elect to file a notice of intent to begin a new project
15 period concurrent with an existing project period if the applicable minimum job requirements

16 are achieved, the qualified company provides the department with the required annual reporting,
17 and the qualified company is in compliance with this program and any other state programs in
18 which the qualified company is currently or has previously participated. However, the qualified
19 company shall not receive any further program benefits under the original approval for any new
20 jobs created after the date of the new notice of intent, and any jobs created before the new notice
21 of intent shall not be included as new jobs for purposes of the benefit calculation for the new
22 approval. When a qualified company has filed and received approval of a notice of intent and
23 subsequently files another notice of intent, the department shall apply the definition of project
24 facility under subdivision (18) of section 620.2005 to the new notice of intent as well as all
25 previously approved notices of intent and shall determine the application of the definitions of
26 new job, new payroll, project facility base employment, and project facility base payroll
27 accordingly.

28 2. Notwithstanding any provision of law to the contrary, the benefits available to the
29 qualified company under any other state programs for which the company is eligible and which
30 utilize withholding tax from the new or retained jobs of the company shall first be credited to the
31 other state program before the withholding retention level applicable under this program will
32 begin to accrue. If any qualified company also participates in a job training program utilizing
33 withholding tax, the company shall retain no withholding tax under this program, but the
34 department shall issue a refundable tax credit for the full amount of benefit allowed under this
35 program. The calendar year annual maximum amount of tax credits which may be issued to a
36 qualifying company that also participates in a job training program shall be increased by an
37 amount equivalent to the withholding tax retained by that company under a jobs training
38 program.

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

50 4. The department may withhold the approval of any benefits under this program until
51 it is satisfied that proper documentation has been provided, and shall reduce the benefits to

52 reflect any reduction in full-time employees or payroll. Upon approval by the department, the
53 qualified company may begin the retention of the withholding taxes when it reaches the required
54 number of jobs and the average wage meets or exceeds the applicable percentage of county
55 average wage. Tax credits, if any, may be issued upon satisfaction by the department that the
56 qualified company has exceeded the applicable percentage of county average wage and the
57 required number of jobs, **provided that tax credits awarded under subsection 6 of section**
58 **620.2010 may be issued following the qualified company's acceptance of the department's**
59 **proposal and issued pursuant to the requirements set forth in the written agreement**
60 **between the department and the qualified company under subsection 3 of section 620.2010.**

61 5. Any qualified company approved for benefits under this program shall provide to the
62 department, upon request, any and all information and records reasonably required to monitor
63 compliance with program requirements. This program shall be considered a business recruitment
64 tax credit under subdivision (4) of subsection 2 of section 135.800, and any qualified company
65 approved for benefits under this program shall be subject to the provisions of sections 135.800
66 to 135.830.

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

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

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

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

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

81 8. For tax credits for the creation of new jobs under section 620.2010, the department
82 shall allocate the annual tax credits based on the date of the approval, reserving such tax credits
83 based on the department's best estimate of new jobs and new payroll of the project, and any other
84 applicable factors in determining the amount of benefits available to the qualified company under
85 this program, **provided that the department shall reserve no more than twenty one and one-**
86 **half percent of the maximum annual amount of tax credits that may be authorized under**
87 **subsection 7 of this section for award under subsection 6 of section 620.2010.** However, the

88 annual issuance of tax credits shall be subject to annual verification of actual payroll by the
89 department. Any authorization of tax credits shall expire if, within two years from the date of
90 commencement of operations, or approval if applicable, the qualified company has failed to meet
91 the applicable minimum job requirements. The qualified company may retain authorized
92 amounts from the withholding tax under the project once the applicable minimum job
93 requirements have been met for the duration of the project period. No benefits shall be provided
94 under this program until the qualified company meets the applicable minimum new job
95 requirements **or, for benefits awarded under subsection 6 of section 620.2010, until the**
96 **qualified company has satisfied the requirements set forth in the written agreement**
97 **between the department and the qualified company under subsection 3 of section 620.2010.**
98 In the event the qualified company does not meet the applicable minimum new job requirements,
99 the qualified company may submit a new notice of intent or the department may provide a new
100 approval for a new project of the qualified company at the project facility or other facilities.

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

110 10. Prior to the issuance of tax credits or the qualified company beginning to retain
111 withholding taxes, the department shall verify through the department of revenue and any other
112 applicable state department that the tax credit applicant does not owe any delinquent income,
113 sales, or use tax or interest or penalties on such taxes, or any delinquent fees or assessments
114 levied by any state department and through the department of insurance, financial institutions and
115 professional registration that the applicant does not owe any delinquent insurance taxes or other
116 fees. Such delinquency shall not affect the approval, except that any tax credits issued shall be
117 first applied to the delinquency and any amount issued shall be reduced by the applicant's tax
118 delinquency. If the department of revenue, the department of insurance, financial institutions and
119 professional registration, or any other state department concludes that a taxpayer is delinquent
120 after June fifteenth but before July first of any year and the application of tax credits to such
121 delinquency causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall be
122 granted thirty days to satisfy the deficiency in which interest, penalties, and additions to tax shall
123 be tolled. After applying all available credits toward a tax delinquency, the administering agency

124 shall notify the appropriate department and that department shall update the amount of
125 outstanding delinquent tax owed by the applicant. If any credits remain after satisfying all
126 insurance, income, sales, and use tax delinquencies, the remaining credits shall be issued to the
127 applicant, subject to the restrictions of other provisions of law.

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

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

133 13. Notwithstanding any provision of law to the contrary, beginning August 28, 2013,
134 no new benefits shall be authorized for any project that had not received from the department a
135 proposal or approval for such benefits prior to August 28, 2013, under the development tax credit
136 program created under sections 32.100 to 32.125, the rebuilding communities tax credit program
137 created under section 135.535, the enhanced enterprise zone tax credit program created under
138 sections 135.950 to 135.973, and the Missouri quality jobs program created under sections
139 620.1875 to 620.1890. The provisions of this subsection shall not be construed to limit or impair
140 the ability of any administering agency to authorize or issue benefits for any project that had
141 received an approval or a proposal from the department under any of the programs referenced
142 in this subsection prior to August 28, 2013, or the ability of any taxpayer to redeem any such tax
143 credits or to retain any withholding tax under an approval issued prior to that date. The
144 provisions of this subsection shall not be construed to limit or in any way impair the ability of
145 any governing authority to provide any local abatement or designate a new zone under the
146 enhanced enterprise zone program created by sections 135.950 to 135.963. Notwithstanding any
147 provision of law to the contrary, no qualified company that is awarded benefits under this
148 program shall:

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

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

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

157 15. By no later than January 1, 2014, and the first day of each calendar quarter thereafter,
158 the department shall present a quarterly report to the general assembly detailing the benefits
159 authorized under this program during the immediately preceding calendar quarter to the extent

160 such information may be disclosed under state and federal law. The report shall include, at a
161 minimum:

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

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

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

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

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

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

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

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

184 (2) If such program is reauthorized, the program authorized under this section shall
185 automatically sunset twelve years after the effective date of ~~this~~ the reauthorization of sections
186 620.2000 to 620.2020; and

187 (3) Sections 620.2000 to 620.2020 shall terminate on September first of the calendar
188 year immediately following the calendar year in which the program authorized under sections
189 620.2000 to 620.2020 is sunset.

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