

FIRST REGULAR SESSION

HOUSE BILL NO. 854

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RICHARD (Sponsor), JETTON, McGHEE, YATES, WASSON, LEMBKE, PAGE, WILSON (119), SWINGER, HOBBS, FRANZ, CHINN, CUNNINGHAM (145), SATER, BEARDEN, DEMPSEY, NIEVES, LAGER, MYERS, QUINN, SMITH (118), STEFANICK, RECTOR, BLACK, PHILLIPS, MOORE, ERVIN, BAKER (123), ST. ONGE, LIPKE, MAY, BYRD, POLLOCK, JONES, WELLS, MUSCHANY, RUESTMAN, COOPER (158), FAITH, DAY, THRELKELD, SCHAAF, BEAN, WILSON (130), WOOD, COOPER (155), HUNTER, SELF, WALLACE, STEVENSON, KELLY, DIXON, ROARK, COOPER (120), GOODMAN, ICET AND KRAUS (Co-sponsors).

Read 1st time March 29, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2104L.011

AN ACT

To amend chapter 620, RSMo, by adding thereto six new sections relating to the establishment of the Missouri quality jobs program.

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

Section A. Chapter 620, RSMo, is amended by adding thereto six new sections, to be
2 known as sections 620.1401, 620.1404, 620.1407, 620.1411, 620.1414, and 620.1417, to read
3 as follows:

620.1401. Sections 620.1401 to 620.1417 shall be known and may be cited as the
2 **"Missouri Quality Jobs Act".**

620.1404. 1. As used in sections 620.1401 to 620.1417, the following terms shall
2 **mean:**

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

4 (2) **"Base employment", for the twelve-month period prior to the date of the notice**
5 **of intent or proposal, the average number of full-time equivalent employees located at the**
6 **project facility, including any related facility of the qualified company or a related**
7 **company located in this state that is directly related to the operations of the project facility**
8 **if a reduction in the number of full-time equivalent employees at the related company or**

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.

9 facility results in a corresponding increase of full-time equivalent employees at the project
10 facility in the twelve months prior to the notice of intent or proposal or within three years
11 after the date of the notice of intent or proposal. In the event the project facility has not
12 been in operation for a full twelve-month period, base employment is the average number
13 of full-time equivalent employees for the number of months the project facility has been
14 in operation;

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

18 (4) "County average wage", the average wages in each county as determined by the
19 department for the most recently completed full calendar year. The department shall
20 publish the county average wage for each county at least annually;

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) "Full-time equivalent employees", employees of the qualified company
25 converted to reflect an equivalent of the number of full-time, year-around employees. The
26 method for converting part-time and seasonal employees into an equivalent number of
27 full-time, year-around employees shall be published in a rule promulgated by the
28 department as authorized in section 620.1411;

29 (9) "Full-time, year-around employee", an employee of the company that works an
30 average of at least thirty-five hours per week for a twelve-month period, and one for which
31 the qualified company offers health insurance and pays at least fifty percent of such
32 insurance premiums;

33 (10) "High impact project", a project that creates one hundred or more new jobs
34 within two years from commencement of operations;

35 (11) "Local incentives", the amount of direct benefit received by a qualified
36 company for a project facility from one or more local political subdivisions, but shall not
37 include loans or other funds provided to the qualified company that must be repaid by the
38 qualified company to the political subdivision;

39 (12) "NAICS", the 1997 edition of the North American Industry Classification
40 System as prepared by the Executive Office of the President, Office of Management and
41 Budget. Any NAICS sector, subsector, industry group or industry identified in this section
42 shall include its corresponding classification in subsequent federal industry classification
43 systems;

44 (13) **"New direct local revenue"**, the amount of direct net new tax revenues of the
45 **local political subdivisions likely to be produced by the project over the project period as**
46 **calculated by the department and net new utility revenues, provided the local incentives**
47 **include a discount or other direct incentives from utilities owned or operated by the**
48 **political subdivision;**

49 (14) **"New investment"**, the purchase or leasing of new tangible assets to be placed
50 **in operation at the project facility, which will be directly related to the new jobs;**

51 (15) **"New job"**, the number of full-time, year-around employees located at the
52 **project facility that exceeds the base employment;**

53 (16) **"New payroll"**, the amount of wages paid by a qualified company to employees
54 **in new jobs;**

55 (17) **"Notice of intent"**, a form developed by the department, completed by the
56 **qualified company and submitted to the department which states the qualified company's**
57 **intent to hire new jobs and request benefits under this program;**

58 (18) **"Percent of local incentives"**, the amount of local incentives divided by the
59 **amount of new direct local revenue;**

60 (19) **"Program"**, the Missouri quality jobs program provided in sections 620.1401
61 **to 620.1417;**

62 (20) **"Project facility"**, the building used by a qualified company at which the new
63 **jobs and new investment will be located. A project facility may include separate buildings**
64 **that are adjacent, or sharing common walls, utilities, or covered walkways such that their**
65 **purpose and operations are interrelated;**

66 (21) **"Project period"**, the time period that the benefits are provided to a qualified
67 **company;**

68 (22) **"Proposal"**, a document submitted by the department to the qualified
69 **company that states the benefits that may be provided by this program. The effective date**
70 **of such proposal cannot be prior to the commencement of operations;**

71 (23) **"Qualified company"**, a firm, partnership, joint venture, association, private
72 **or public corporation whether organized for profit or not, or headquarters of such entity**
73 **registered to do business in Missouri that is the owner or operator of a project facility. For**
74 **the purposes of sections 620.1401 to 620.1417, the term "qualified company" shall not**
75 **include:**

76 (a) **Gambling establishments (NAICS industry group 7132);**

77 (b) **Retail trade establishments (NAICS sectors 44 and 45);**

78 (c) **Food and drinking places (NAICS subsector 722);**

79 (d) **Utilities regulated by the Missouri public service commission;**

80 (e) Service companies, unless more than seventy-five percent of such service
81 company's annual revenues during the period at the project facility are derived from
82 sources outside Missouri;

83 (f) Any company that is delinquent in the payment of any nonprotested taxes or any
84 other amounts due the state or federal government or any other political subdivision of this
85 state; or

86 (g) Any company that has filed for or has publicly announced its intention to file
87 for bankruptcy protection;

88 (24) "Related company" means:

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

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

93 (c) Corporations, partnerships, trusts or associations controlled by an individual,
94 corporation, partnership, trust or association in control of the qualified company. As used
95 in this subdivision, "control of a corporation" shall mean ownership, directly or indirectly,
96 of stock possessing at least fifty percent of the total combined voting power of all classes
97 of stock entitled to vote, "control of a partnership or association" shall mean ownership
98 of at least fifty percent of the capital or profits interest in such partnership or association,
99 "control of a trust" shall mean ownership, directly or indirectly, of at least fifty percent
100 of the beneficial interest in the principal or income of such trust, and ownership shall be
101 determined as provided in section 318 of the Internal Revenue Code of 1986, as amended;

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

105 (26) "Small and expanding business project", a qualified company that, within two
106 years of the date of the notice of intent or proposal, whichever is later, creates a minimum
107 of twenty new jobs if the project facility is located in a rural area or a minimum of forty
108 new jobs if the project facility is not located in a rural area and less than one hundred total
109 new jobs at the time the notice of intent is filed regardless of the location of the qualified
110 company;

111 (27) "Tax credits", tax credits issued by the department to offset the state income
112 taxes imposed by chapter 143, RSMo, or which may be sold or refunded as provided for
113 in this program;

114 (28) "Technology business project", a qualified company that, within two years of
115 the date of the notice of intent or proposal, whichever is later, creates a minimum of ten

116 new jobs with at least seventy-five percent of the new jobs directly involved in the
117 operations of a technology company as determined by a regulation promulgated by the
118 department under the provisions of section 620.1411, and classified by NAICS codes;

119 (29) "Withholding tax", the state tax imposed by sections 143.191 to 143.265,
120 RSMo.

620.1407. 1. A qualified company who either provides a notice of intent or is
2 provided a proposal for a project shall be allowed a benefit as provided in this program
3 in the amount and duration provided in this section. A qualified company may receive
4 additional periods for subsequent new jobs at the same facility after the full initial period
5 if the minimum thresholds are met as set forth in sections 620.1401 to 620.1417. There is
6 no limit on the number of periods a qualified company may participate in the program, as
7 long as the minimum thresholds are achieved and the qualified company provides the
8 department with the required reporting and is in proper compliance for this program or
9 other state programs.

10 2. Notwithstanding any provision of law to the contrary, any qualified company
11 that is awarded benefits under this program may not also receive tax credits or exemptions
12 under sections 135.100 to 135.150, RSMo, sections 135.200 to 135.268, RSMo, section
13 135.535, RSMo, or sections 135.900 to 135.906, RSMo, for the same new jobs at the project
14 facility. The benefits available to the company under any other state programs for which
15 the company is eligible and which utilize withholding tax from the new jobs of the company
16 must first be credited to the applicable state program before the withholding retention level
17 applicable under the Missouri quality jobs act will begin to accrue. These other state
18 programs include, but are not limited to, the new jobs training program under sections
19 178.892 to 178.896, RSMo, the job retention program under sections 178.760 to 178.764,
20 RSMo, the real property tax increment allocation redevelopment act, sections 99.800 to
21 99.865, RSMo, or the Missouri downtown and rural economic stimulus act under sections
22 99.915 to 99.980, RSMo.

23 3. If any qualified company also participates in the new jobs training program in
24 sections 178.892 to 178.896, RSMo, the company shall retain no withholding tax, but the
25 department shall issue a refundable tax credit for the full amount of benefit allowed under
26 this subsection.

27 4. The types of projects and the amount of benefits to be provided are:

28 (1) Small and expanding business projects: In exchange for the consideration
29 provided by the new tax revenues and other economic stimulus that will be generated by
30 the new jobs created by the program, a qualified company may retain an amount equal to
31 the withholding tax from the new jobs that would otherwise be withheld and remitted by

32 the qualified company under the provisions of sections 143.191 to 143.265, RSMo, for a
33 period of three years from the date the required number of new jobs has been created if
34 the average wage of the new payroll equals or exceeds the county average wage or for a
35 period of five years from the date the required number of new jobs has been created if the
36 average wage of the new payroll equals or exceeds one hundred twenty percent of the
37 county average wage;

38 (2) **Technology business projects:** In exchange for the consideration provided by
39 the new tax revenues and other economic stimulus that will be generated by the new jobs
40 created by the program, a qualified company may retain an amount equal to a maximum
41 of five percent of new payroll for a period of five years from the date the required number
42 of jobs has been created from the withholding tax of the new jobs that would otherwise be
43 withheld and remitted by the qualified company under the provisions of sections 143.191
44 to 143.265, RSMo, if the average wage of the new payroll equals or exceeds the county
45 average wage. An additional one-half percent of new payroll may be added to the five
46 percent maximum if the average wage of the new payroll in any year exceeds one hundred
47 twenty percent of the county average wage in the county in which the project facility is
48 located, plus an additional one-half percent of new payroll may be added if the average
49 wage of the new payroll in any year exceeds one hundred forty percent of the average wage
50 in the county in which the project facility is located. The department shall issue a
51 refundable tax credit for any difference between the amount of benefit allowed under this
52 subdivision and the amount of withholding tax retained by the company, in the event the
53 withholding tax is not sufficient to provide the entire amount of benefit due to the qualified
54 company under this subdivision. The calendar year annual maximum amount of tax
55 credits that may be issued to any qualified company for a project or combination of
56 projects is five hundred thousand dollars;

57 (3) **High impact projects:** In exchange for the consideration provided by the new
58 tax revenues and other economic stimulus that will be generated by the new jobs created
59 by the program, a qualified company may retain an amount from the withholding tax of
60 the new jobs that would otherwise be withheld and remitted by the qualified company
61 under the provisions of sections 143.191 to 143.265, RSMo, equal to three percent of new
62 payroll for a period of five years from the date the required number of jobs has been
63 created if the average wage of the new payroll equals or exceeds the county average wage
64 of the county in which the project facility is located. The percentage of payroll allowed
65 under this subdivision shall be three and one-half percent of new payroll if the average
66 wage of the new payroll in any year exceeds one hundred twenty percent of the county
67 average wage in the county in which the project facility is located. The percentage of

68 payroll allowed under this subdivision shall be four percent of new payroll if the average
69 wage of the new payroll in any year exceeds one hundred forty percent of the county
70 average wage in the county in which the project facility is located. An additional one
71 percent of new payroll may be added to these percentages if local incentives equal between
72 ten percent and twenty-four percent of the new direct local revenue; an additional two
73 percent of new payroll is added to these percentages if the local incentives equal between
74 twenty-five percent and forty-nine percent of the new direct local revenue; and an
75 additional three percent of payroll is added to these percentages if the local incentives
76 equal fifty percent or more of the new direct local revenue. The department shall issue a
77 refundable tax credit for any difference between the amount of benefit allowed under this
78 subdivision and the amount of withholding tax retained by the company, in the event the
79 withholding tax is not sufficient to provide the entire amount of benefit due to the qualified
80 company under this subdivision. The calendar year annual maximum amount of tax
81 credits that may be issued to any qualified company for a project or combination of
82 projects is seven hundred fifty thousand dollars. The calendar year annual maximum
83 amount of tax credit that may be issued to any qualified company for a project or
84 combination of projects may be increased up to one million dollars if such action is
85 proposed by the department and approved by the quality jobs advisory task force
86 established in section 620.1414. In considering such a request, the task force shall rely on
87 economic modeling and other information supplied by the department when requesting the
88 increased limit on behalf of the project.

89 4. The qualified company shall provide an annual report to the department as
90 prescribed by the department to document the basis for the benefits of this program. The
91 department may withhold the approval of any benefits until it is satisfied that proper
92 documentation has been provided.

93 5. The maximum calendar year annual tax credits issued for the entire program
94 shall not exceed twelve million dollars. Notwithstanding any provision of law to the
95 contrary, the maximum annual tax credits authorized under section 135.535, RSMo, is
96 hereby reduced from ten million dollars to three million dollars, with the balance of seven
97 million dollars transferred to this program. Notwithstanding any provision of law to the
98 contrary, the maximum annual amount of other net new revenues approved for
99 disbursements from the state supplemental downtown development fund under section
100 99.960, RSMo, is hereby reduced from one hundred fifty million dollars to one hundred
101 forty-five million dollars, with the balance of five million dollars transferred to this
102 program. There shall be no limit on the amount of withholding taxes that may be retained
103 by approved companies under this program.

104 **6. The department shall allocate the annual tax credits based on the date of the**
105 **notice of intent or the date of the proposal, reserving such tax credits based on the**
106 **department's best estimate of new jobs and new payroll of the project, and the other**
107 **factors in the determination of benefits of this program. However, the annual issuance of**
108 **tax credits is subject to the annual verification of the actual new payroll. The allocation**
109 **of tax credits for the period assigned to a project shall expire if, within two years from the**
110 **date of commencement of operations, the minimum thresholds have not been achieved.**
111 **The qualified company may retain authorized amounts from the withholding tax under**
112 **this section once the minimum new jobs thresholds are met for the duration of the project**
113 **period. No benefits shall be provided under this program until the qualified company**
114 **meets the minimum new jobs thresholds. In the event the qualified company does not meet**
115 **the minimum new job threshold, the qualified company may submit a new notice of intent**
116 **or the department may provide a new proposal for a new project of the qualified company**
117 **at the project facility or other facilities.**

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

122 **8. Tax credits may not be carried forward but shall be claimed for the taxable year**
123 **during which commencement of commercial operations occurs at such new business**
124 **facility, and for each of the four succeeding taxable years for which the credit is issued.**

125 **9. Tax credits authorized by this section may be transferred, sold, or assigned by**
126 **filing a notarized endorsement thereof with the department that names the transferee, the**
127 **amount of tax credit transferred, and the value received for the credit, as well as any other**
128 **information reasonably requested by the department.**

129 **10. The director of revenue shall issue a refund to the qualified company to the**
130 **extent that the amount of credits allowed in this section exceeds the amount of the qualified**
131 **company's income tax.**

132 **11. An employee of a qualified company will receive full credit for the amount of**
133 **tax withheld as provided in section 143.221, RSMo.**

620.1411. The department may adopt such rules, statements of policy, procedures,
2 **forms, and guidelines as may be necessary to carry out the provisions of sections 620.1401**
3 **to 620.1417. Any rule or portion of a rule, as that term is defined in section 536.010,**
4 **RSMo, that is created under the authority delegated in this section shall become effective**
5 **only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and,**
6 **if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**

7 nonseverable and if any of the powers vested with the general assembly pursuant to
8 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule
9 are subsequently held unconstitutional, then the grant of rulemaking authority and any
10 rule proposed or adopted after August 28, 2005, shall be invalid and void.

620.1414. There is hereby created a volunteer task force, to be known as the
2 "Quality Jobs Advisory Task Force", which shall consist of the chairperson of the
3 economic development committee of the Missouri senate or his or her designee, the
4 chairperson of the economic development committee of the Missouri house of
5 representatives or his or her designee, the director of the department of economic
6 development or his or her designee, and two members to be appointed by the governor.

620.1417. Prior to March first each year, the department will provide a report on
2 the program to the general assembly including the names of participating companies,
3 location of such companies, the annual amount of benefits provided, the estimated net state
4 fiscal impact, direct and indirect new state taxes derived from the project, the number of
5 new jobs created or jobs retained, the average wages of each project, and the types of
6 qualified companies using the program.