

FIRST REGULAR SESSION

# HOUSE BILL NO. 1236

## 100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EGGLESTON.

2481H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

30

31 Any business which is classified as an eligible business at the time of the initial investment  
32 in such business by a rural fund shall remain classified as an eligible business and may  
33 receive follow-on investments from any rural fund, and such follow-on investments shall  
34 be qualified investments even though such business may not meet the definition of an  
35 eligible business at the time of such follow-on investments;

36           (7) "Eligible distribution":

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

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

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

46

47 Such distributions may include reasonable and necessary fees paid for professional  
48 services, including legal and accounting services, related to the formation and operation

49 of the rural fund and an annual management fee that shall not exceed two percent of the  
50 rural fund's qualified investment authority;

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

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

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

56 (c) A part-time equivalent;

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

64 (10) "Jobs retained", any full-time jobs that existed at an eligible business prior to  
65 a rural fund's initial qualified investment and are retained at the end of each twelve-month  
66 period following a rural fund's qualified investment, calculated based on the monthly  
67 average job rate for the prior twelve-month period. The reported number of jobs retained  
68 for a year shall not exceed the number reported on the initial report under section  
69 620.3530;

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

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

76 (13) "Principal business operations", the location where at least sixty percent of a  
77 business's employees work or where employees who are paid at least sixty percent of such  
78 business's payroll work. A business that has agreed to relocate employees using the  
79 proceeds of a qualified investment to establish its principal business operations in a new  
80 location shall be deemed to have its principal business operations in such new location if  
81 it satisfied the requirements of this subdivision no later than three hundred sixty days after  
82 receiving a qualified investment;

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

86           (15) "Qualified investment", any investment in an eligible business or any loan to  
87 an eligible business with a stated maturity date of at least one year after the date of  
88 issuance, excluding revolving lines of credit and senior secured debt unless the eligible  
89 business has a credit refusal letter or similar correspondence from a depository institution  
90 or a referral letter or similar correspondence from a depository institution referring the  
91 business to a rural fund; provided that, with respect to any one eligible business, the  
92 maximum amount of investments made in such business by one or more rural funds, on  
93 a collective basis with all of the businesses' affiliates, with the proceeds of capital  
94 investments shall be the greater of twenty percent of the rural fund's capital investment  
95 authority or six million five hundred thousand dollars, exclusive of investments made with  
96 repaid or redeemed investments or interest or profits realized thereon;

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

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

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

102           (19) "State tax liability", any liability incurred by any entity subject to the state  
103 income tax imposed under chapter 143, excluding withholding tax imposed under sections  
104 143.191 to 143.265, or an insurance company paying an annual tax on its gross premium  
105 receipts, or other financial institution paying taxes to the state or any political subdivision  
106 of the state under the provisions of chapter 148, or an express company which pays an  
107 annual tax on its gross receipts in this state.

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

6           (1) The amount of capital investment requested;

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

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

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

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

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

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

(2) The revenue impact assessment submitted with the application does not demonstrate that the applicant's business plan will result in a positive economic impact on this state over a ten year period that exceeds the cumulative amount of tax credits that would be issued to the applicant if the application were approved.

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

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

620.3515. 1. The department shall certify capital investments. Within ninety days of the applicant receiving notice of certification, the rural fund shall issue the capital investment to, and receive cash in the amount of the certified amount from, a rural

investor. At least ten percent of the rural investor's capital investment shall be composed of capital raised by the rural investor from sources, including directors, members, employees, officers, and affiliates of the rural investor, other than the amount invested by the allocatee claiming the tax credits in exchange for such allocation of tax credits. The rural fund shall provide the department with evidence of the receipt of the cash investment within ninety-five days of the applicant receiving notice of certification.

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

3. A rural fund, before making a qualified investment, may request from the department a written opinion as to whether the business in which it proposes to invest is an eligible business. The department, not later than the fifteenth business day after the date of receipt of such request, shall notify the rural fund of its determination. If the department fails to notify the rural fund of its determination by the twentieth business day, the business in which the rural fund proposes to invest shall be deemed an eligible business.

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

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

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

21           (1) The rural fund does not invest sixty percent of its capital investment authority  
22 in qualified investments in this state within two years of the credit allowance date, and one  
23 hundred percent of its capital investment authority in qualified investments in this state  
24 within three years of the credit allowance date;

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

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

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

49           4. Recaptured credits and the related capital investment authority shall revert to  
50 the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22          3. If at any time on or after the sixth anniversary of the credit allowance date a  
23 rural fund satisfies the jobs created and jobs retained amounts required in such fund's  
24 notice of certification as provided under subsection 4 of section 620.3510, such rural fund  
25 shall no longer be subject to regulation under the provisions of sections 620.3500 to  
26 620.3530 and may exit the program by providing written notice to the department  
27 certifying such rural fund has met its requirements and will be exiting the program.

28          4. A rural fund not meeting the job requirements may apply to the department to  
29 exit the program and no longer be subject to the regulation under the provisions of sections



30 620.3500 to 620.3530 by paying the penalties provided under subsection 5 of this section,  
31 as applicable. The department shall respond to the exit application within fifteen days of  
32 receipt. In evaluating the exit application, the fact that no credits have been recaptured  
33 and that the rural fund has not received a notice of recapture that has not been cured  
34 pursuant to subsection 5 of section 620.3520 shall be sufficient evidence to prove that the  
35 rural fund is eligible for exit. The department shall not unreasonably deny an exit  
36 application submitted under this subsection. If the exit application is denied, the notice  
37 shall include the reasons for such determination.

38 5. (1) A rural fund is subject to a penalty in the amount provided under  
39 subdivision (2) of this subsection if:

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

43 (b) The number of jobs created and jobs retained as a result of the rural fund's  
44 qualified investments, as reported on the rural fund's reports, is less than the estimated  
45 number of jobs created and jobs retained included in the rural fund's application under  
46 section 620.3510.

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

49 (a) The numerator of which is the estimated number of jobs created and jobs  
50 retained included in the rural fund's application under section 620.3510, less the number  
51 of jobs created and jobs retained reported in all of the rural fund's reports submitted  
52 pursuant to this section; and

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

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56 Before making a distribution to the fund's equity holders, the rural fund shall deduct the  
57 amount of the penalty from the amount otherwise authorized to be distributed to the equity  
58 holders and pay such penalty to the department.

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