

FIRST REGULAR SESSION

# HOUSE BILL NO. 583

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE O'DONNELL.

0777H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to a tax credit for certain live entertainment events, with a delayed effective date.

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

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be  
2 known as section 135.753, to read as follows:

**135.753. 1. This section shall be known and may be cited as the "Entertainment  
2 Industry Jobs Act".**

3 **2. As used in this section, the following terms mean:**

4 **(1) "Base investment", the aggregate funds actually invested and expended by a  
5 Missouri taxpayer as a rehearsal expense or tour expense pursuant to this section;**

6 **(2) "Concert", a ticketed live performance of music in the physical presence of at  
7 least one thousand individuals who view the performance live. For the purposes of this  
8 subdivision, "ticketed" shall mean a concert where individual tickets for attendance are  
9 offered for sale to the public;**

10 **(3) "Concert tour equipment", stage, set, scenery, design elements, automation,  
11 rigging, trusses, spotlights, lighting, sound equipment, video equipment, special effects,  
12 cases, communication devices, power distribution equipment, backline, and other  
13 miscellaneous equipment or supplies used during a concert or rehearsal;**

14 **(4) "Department", the department of economic development;**

15 **(5) "Expense", any expense, expenditure, cost, charge, or other disbursement or  
16 spending of funds;**

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           (6) "Facility", a site with one or more studios. Multiple studios at a single  
18 location shall not be considered separate facilities. A site may include one or more  
19 buildings on the same property or properties within a five-mile radius, provided that the  
20 properties' purpose and operations are interrelated and are owned or operated by the  
21 same owner or operator, as applicable;

22           (7) "Facility full-time equivalent employee", an employee who is scheduled to  
23 work an average of at least thirty-five hours per week and is located at the qualified  
24 rehearsal facility or a combination of two or more employees who combined work an  
25 average of at least thirty-five hours per week and who are located at the qualified  
26 rehearsal facility. An employee shall be considered to be located at the qualified  
27 rehearsal facility if such employee spends fifty percent or more of the employee's work  
28 time at the qualified rehearsal facility or at a nearby location serving the qualified  
29 rehearsal facility, including a warehouse, located in Missouri and owned by the same  
30 owner or operator, as applicable, of the qualified rehearsal facility. An employee who  
31 spends less than fifty percent of the employee's work time at the qualified rehearsal  
32 facility or nearby location shall be considered to be located at a qualified rehearsal  
33 facility if the employee receives his or her directions and control from the qualified  
34 rehearsal facility and is on the qualified rehearsal facility's payroll;

35           (8) "Minimum rehearsal and tour requirements", the occurrence of all of the  
36 following during a rehearsal or tour:

37           (a) The purchase or rental of concert tour equipment, related services, or both,  
38 in an amount of at least one million dollars from a Missouri vendor for use in the  
39 rehearsal, on the tour, or both;

40           (b) A rehearsal at a qualified rehearsal facility for a minimum of ten days; and

41           (c) The holding of at least two concerts in Missouri;

42           (9) "Missouri vendor", an individual or entity located in and maintaining a place  
43 of business in this state. Only transactions made through a Missouri location of a  
44 Missouri vendor shall constitute a transaction with a Missouri vendor for the purposes  
45 of this section;

46           (10) "Nonresident", the same meaning as defined pursuant to section 143.101;

47           (11) "Pass-through entity", any incorporated or unincorporated entity that has  
48 or elects pass-through taxation under federal law including, without limitation, a  
49 partnership, S corporation, or an unincorporated entity;

50           (12) "Qualified rehearsal facility", a facility primarily used for rehearsals  
51 located in this state that meets all of the following criteria:

52           (a) Has a minimum of twelve thousand five hundred square feet of column-free,  
53 unobstructed floor space in at least one rehearsal studio in the facility;

54 (b) Has had a minimum of eight million dollars invested in the facility, in land or  
55 structure, or a combination of land and structure;

56 (c) Has a permanent grid system with a capacity of a minimum of five hundred  
57 thousand pounds in at least one rehearsal studio in the facility;

58 (d) Has a height from floor to permanent grid of a minimum of fifty feet in at  
59 least one rehearsal studio in the facility;

60 (e) Has at least one sliding or roll-up access door with a minimum height of  
61 fourteen feet in the facility;

62 (f) Has a security system that includes seven-days-a-week security cameras and  
63 the use of access control identification badges;

64 (g) Has a service area with production offices, catering, and dressing rooms with  
65 a minimum of five thousand square feet; and

66 (h) Is owned or operated by an entity that employs on average, on an annual  
67 basis, at least eighty facility full-time equivalent employees.

68

69 A qualified rehearsal facility shall not include a facility at which concerts are regularly  
70 held;

71 (13) "Rehearsal", an event or series of events that occur in preparation for a  
72 tour prior to the start of the tour or during a tour when additional preparation may be  
73 needed;

74 (14) "Rehearsal expenses", includes all of the following when incurred or when  
75 such expenses will be incurred during a rehearsal:

76 (a) Total aggregate payroll;

77 (b) Payment to a personal service corporation representing individual talent;

78 (c) Payment to a pass-through entity representing individual talent;

79 (d) Expenses related to construction, operations, editing, photography, staging,  
80 lighting, wardrobe, and accessories;

81 (e) The leasing of vehicles from a Missouri vendor;

82 (f) The transportation of people or concert tour equipment to or from a train  
83 station, bus depot, airport, or other transportation location, or from a residence or  
84 business entity;

85 (g) Insurance coverage for an entire tour if the insurance coverage is purchased  
86 or will be purchased through an insurance agent who is a Missouri vendor;

87 (h) Food and lodging from a Missouri vendor;

88 (i) The purchase or rental of concert tour equipment from a Missouri vendor;

89 (j) The rental of a qualified rehearsal facility; and

90 (k) Emergency or medical support services required to conduct a rehearsal;

91           **(15) "Resident", the same meaning as defined pursuant to section 143.101;**

92           **(16) "Total aggregate payroll", the total sum expended on salaries paid to**  
93 **resident employees, regardless of whether such resident is working within or outside of**  
94 **this state, or nonresident employees working within this state in one or more tours or**  
95 **rehearsals, including, without limitation, payments to a loan-out company. For the**  
96 **purposes of this subdivision:**

97           **(a) With respect to a single employee, the portion of any salary that exceeds two**  
98 **million dollars in the aggregate for a single tour shall not be included when calculating**  
99 **total aggregate payroll;**

100           **(b) All payments to a single employee and any legal entity in which the employee**  
101 **has any direct or indirect ownership interest shall be considered as having been paid to**  
102 **the employee and shall be aggregated regardless of the means of payment or**  
103 **distribution; and**

104           **(c) Total aggregate payroll shall include payments to a loan-out company that**  
105 **has met its withholding tax obligations as provided in this paragraph. The taxpayer**  
106 **claiming the credit authorized pursuant to this section shall withhold Missouri income**  
107 **tax at the rate imposed pursuant to section 143.071 on all payments to loan-out**  
108 **companies for services performed in Missouri. Any amounts so withheld shall be**  
109 **deemed to have been withheld by the loan-out company on wages paid to its employees**  
110 **for services performed in Missouri, notwithstanding any exclusions under Missouri law**  
111 **for short-term employment of nonresident workers, out-of-state businesses, or**  
112 **otherwise. The amounts so withheld shall be allocated to the loan-out company's**  
113 **employees based on the payments made to the loan-out company's employees for**  
114 **services performed in Missouri. For the purposes of this section, loan-out company**  
115 **nonresident employees performing services in Missouri shall be considered taxable**  
116 **nonresidents and the loan-out company shall be subject to income taxation in the tax**  
117 **year in which the loan-out company's employees perform services in Missouri,**  
118 **notwithstanding any other provisions of chapter 143. Such withholding liability shall be**  
119 **subject to penalties and interest in the same manner as the employee withholding taxes**  
120 **imposed under chapter 143, and the department of revenue shall provide by regulation**  
121 **the manner in which such liability shall be assessed and collected;**

122           **(17) "Tour", a series of live concerts or other live performances performed or to**  
123 **be performed by a musical or other performer, including at least one rehearsal, in one or**  
124 **more locations over multiple days;**

125           **(18) "Tour expenses", expenses incurred or which will be incurred during a tour,**  
126 **including venues located in this state, including:**

127           **(a) Total aggregate payroll;**

128 (b) The transportation of people or concert tour equipment to or from a train  
129 station, bus depot, airport, or other transportation location, or from a residence or  
130 business entity located in this state, or that is purchased or will be purchased from a  
131 Missouri vendor;

132 (c) The leasing of vehicles provided by a Missouri vendor;

133 (d) The purchasing or rental of facilities and equipment from or through a  
134 Missouri vendor;

135 (e) Food and lodging that is incurred or will be incurred from a Missouri  
136 vendor;

137 (f) Marketing or advertising a tour at venues located within this state;

138 (g) Merchandise which is purchased or will be purchased from a Missouri  
139 vendor and used on the tour;

140 (h) Payments made or that will be made to a personal service corporation  
141 representing individual talent if income tax will be paid or accrued on the net income of  
142 the corporation for the tax year pursuant to chapter 143; and

143 (i) Payments made or that will be made to a pass-through entity representing  
144 individual talent for which withholding tax will be withheld by the pass-through entity  
145 on the payment as required pursuant to chapter 143.

146

147 "Tour expenses" shall not include development expenses, including the writing of music  
148 or lyrics, or any expenses claimed by a taxpayer as rehearsal expenses.

149 3. (1) For all tax years beginning on or after January 1, 2024, a taxpayer shall be  
150 allowed a tax credit for rehearsal expenses and tour expenses incurred by the taxpayer.  
151 The amount of the tax credit shall be equal to thirty percent of the taxpayer's base  
152 investment, subject to the limitations provided in subsection 6 of this section. No tax  
153 credit shall be authorized for rehearsal expenses or tour expenses related to a rehearsal  
154 or tour that does not meet the minimum rehearsal and tour requirements.

155 (2) Tax credits issued pursuant to this section shall not be refundable. Any  
156 amount of tax credit that exceeds the tax liability for a taxpayer's tax year may be  
157 carried forward to any of the taxpayer's five subsequent tax years.

158 4. (1) Tax credits authorized pursuant to this section may be transferred or sold  
159 in whole or in part by the taxpayer that claimed the tax credit, provided that the tax  
160 credit is transferred or sold to another Missouri taxpayer.

161 (2) A transferor may make one or more transfers or sales of tax credits claimed  
162 in a tax year, and such transfers or sales may involve one or more transferees.

163 (3) A transferor shall submit to the department and to the department of  
164 revenue a written notification of any transfer or sale of tax credits within thirty days

165 after the transfer or sale of such tax credits. Such notification shall include the amount  
166 of the transferor's unredeemed tax credits prior to transfer, the tax credit identifying  
167 certificate number or other relevant identifying information, the remaining amount of  
168 unredeemed tax credits after transfer, all tax identification numbers for each transferee,  
169 the date of transfer, the amount transferred, and any other information required by the  
170 department or the department of revenue.

171 (4) The transfer or sale of a tax credit authorized pursuant to this section shall  
172 not extend the time in which such tax credit may be redeemed. The carry-forward  
173 period for a tax credit that is transferred or sold shall begin on the date on which the tax  
174 credit was originally issued.

175 (5) A transferee shall have only such rights to claim and redeem the tax credit  
176 that were available to such transferor at the time of the transfer, except for the transfer  
177 use of the tax credit authorized in subdivision (1) of this subsection. To the extent that  
178 such transferor did not have rights to claim or redeem the tax credit at the time of the  
179 transfer, the department of revenue shall either disallow the tax credit claimed by the  
180 transferee or recapture the tax credit from the transferee. The transferee's recourse  
181 shall be against such transferor.

182 (6) Tax credits shall not be transferred or sold for less than sixty percent of the  
183 value of such tax credits.

184 (7) A taxpayer failing to comply with the provisions of this subsection shall not  
185 be able to redeem a tax credit until such taxpayer is in full compliance.

186 5. The tax credits authorized pursuant to this section shall be subject to the  
187 following conditions and limitations:

188 (1) The tax credit may be taken beginning with the tax year in which the  
189 taxpayer earning the tax credit has met the requirements provided pursuant to this  
190 section. For each year in which such taxpayer either claims or transfers the tax credit,  
191 the taxpayer shall attach a schedule to the taxpayer's Missouri income tax return, which  
192 shall include the following information:

193 (a) A description of the qualifying activities and expenses;

194 (b) A detailed listing of the employees' names, Social Security numbers, and  
195 Missouri wages if salaries are included in the base investment;

196 (c) The amount of the tax credit claimed pursuant to this section for the tax year;

197 (d) Any tax credit previously taken by the taxpayer against Missouri income tax  
198 liabilities;

199 (e) The amount of the tax credit carried over from prior years;

200 (f) The amount of the tax credit utilized by the taxpayer claiming the tax credit  
201 in the current tax year; and

202 (g) The amount of the tax credit to be carried over to subsequent tax years;

203 (2) In the initial tax year in which the taxpayer claims the credit authorized  
204 pursuant to this section, the taxpayer shall include a description of the qualifying  
205 activities and expenses that demonstrates that the minimum rehearsal and tour  
206 requirements were met; and

207 (3) Any taxpayer claiming, transferring, or selling a tax credit pursuant to this  
208 section shall be required to reimburse the department of revenue for any department-  
209 initiated audits relating to the tax credit. The provisions of this subdivision shall not  
210 apply to routine tax audits of a taxpayer which may include the review of the tax credit  
211 authorized pursuant to this section.

212 6. (1) The aggregate amount of tax credits that may be authorized in a given  
213 fiscal year pursuant to this section shall not exceed eight million dollars. If the amount  
214 of tax credits applied for by taxpayers exceeds such amount, the department may, at its  
215 discretion, authorize additional tax credits in an amount not to exceed two million  
216 dollars in such fiscal year, provided that the maximum amount of tax credits that may  
217 be authorized during the subsequent fiscal year shall be reduced by the amount of  
218 additional tax credits that the department authorizes.

219 (2) Notwithstanding the provisions of subdivision (1) of subsection 3 of this  
220 section to the contrary, the amount of tax credits claimed by a taxpayer pursuant to this  
221 section during a fiscal year shall not exceed the following amounts:

222 (a) If a taxpayer's base investment is less than four million dollars, the taxpayer  
223 shall not be awarded more than one million dollars in tax credits in a fiscal year;

224 (b) If a taxpayer's base investment is at least four million dollars but less than  
225 eight million dollars, the taxpayer shall not be awarded more than two million dollars in  
226 tax credits in a fiscal year; and

227 (c) If a taxpayer's base investment is at least eight million dollars, the taxpayer  
228 shall not be awarded more than three million dollars in tax credits in a fiscal year.

229 7. The department shall promulgate such rules and regulations as are necessary  
230 to implement and administer the provisions of this section. Any rule or portion of a  
231 rule, as that term is defined in section 536.010, that is created under the authority  
232 delegated in this section shall become effective only if it complies with and is subject to  
233 all of the provisions of chapter 536 and, if applicable, section 536.028. This section and  
234 chapter 536 are nonseverable, and if any of the powers vested with the general assembly  
235 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul  
236 a rule are subsequently held unconstitutional, then the grant of rulemaking authority  
237 and any rule proposed or adopted after August 28, 2023, shall be invalid and void.

238 8. Pursuant to section 23.253 of the Missouri Sunset Act:

239 (1) The program authorized pursuant to this section shall automatically sunset  
240 on December 31, 2030, unless reauthorized by an act of the general assembly;

241 (2) If such program is reauthorized, the program authorized pursuant to this  
242 section shall automatically sunset on December thirty-first, twelve years after the  
243 effective date of the reauthorization;

244 (3) This section shall terminate on September first of the calendar year  
245 immediately following the calendar year in which the program authorized pursuant to  
246 this section is sunset; and

247 (4) The provisions of this subsection shall not be construed to limit or in any way  
248 impair the department's ability to redeem tax credits authorized on or before the date  
249 the program authorized pursuant to this section expires or a taxpayer's ability to  
250 redeem such tax credits.

251 9. (1) Notwithstanding the provisions of subsection 8 of this section, the  
252 provisions of this section shall automatically terminate and expire ninety days after the  
253 department determines that all other state and local governments in the United States of  
254 America have terminated or let lapse their tax credit or other governmental incentive  
255 program for the music or performance entertainment industries, regardless of whether  
256 such credits or programs are now in effect or first commence after the effective date of  
257 this section. The department shall notify the revisor of statutes upon the department's  
258 determination that the tax credit authorized by this section shall terminate pursuant to  
259 this subsection.

260 (2) The provisions of this subsection shall not be construed to limit or in any way  
261 impair the ability of any taxpayer that has met the requirements in this section prior to  
262 the termination of this section to participate in the program authorized under this  
263 section. The provisions of this section shall not be construed to limit or in any way  
264 impair the department's ability to redeem tax credits qualified for on or before the date  
265 the program authorized pursuant to this section expires.

Section B. The enactment of section 135.753 of Section A of this act shall become  
2 effective on July 1, 2024.

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