

FIRST REGULAR SESSION

HOUSE BILL NO. 820

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

1847H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 620.2020, RSMo, and to enact in lieu thereof one new section relating to the Missouri works program sunset, with a penalty provision.

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

Section A. Section 620.2020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 620.2020, to read as follows:

620.2020. 1. The department shall respond to a written request, by or on behalf of a qualified company or qualified military project, for a proposed benefit award under the provisions of this program within five business days of receipt of such request. The department shall respond to a written request, by or on behalf of a qualified manufacturing company, for a proposed benefit award under the provisions of this program within fifteen business days of receipt of such request. Such response shall contain either a proposal of benefits for the qualified company or qualified military project, or a written response refusing to provide such a proposal and stating the reasons for such refusal. A qualified company or qualified military project that intends to seek benefits under the program shall submit to the department a notice of intent. The department shall respond within thirty days to a notice of intent with an approval or a rejection, provided that the department may withhold approval or provide a contingent approval until it is satisfied that proper documentation of eligibility has been provided. The department shall certify or reject the qualifying company's plan outlined in their notice of intent as satisfying good faith efforts made to employ, at a minimum, commensurate with the percentage of minority populations in the state of Missouri, as reported in the previous decennial census, the following: racial minorities, contractors who are racial minorities, and contractors that, in turn, employ at a minimum racial minorities

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.

18 commensurate with the percentage of minority populations in the state of Missouri, as
19 reported in the previous decennial census. Failure to respond on behalf of the department
20 shall result in the notice of intent being deemed approved. A qualified company receiving
21 approval for program benefits may receive additional benefits for subsequent new jobs at the
22 same facility after the full initial project period if the applicable minimum job requirements
23 are met. There shall be no limit on the number of project periods a qualified company may
24 participate in the program, and a qualified company may elect to file a notice of intent to
25 begin a new project period concurrent with an existing project period if the applicable
26 minimum job requirements are achieved, the qualified company provides the department with
27 the required annual reporting, and the qualified company is in compliance with this program
28 and any other state programs in which the qualified company is currently or has previously
29 participated. However, the qualified company shall not receive any further program benefits
30 under the original approval for any new jobs created after the date of the new notice of intent,
31 and any jobs created before the new notice of intent shall not be included as new jobs for
32 purposes of the benefit calculation for the new approval. When a qualified company has filed
33 and received approval of a notice of intent and subsequently files another notice of intent, the
34 department shall apply the definition of project facility under subdivision (24) of section
35 620.2005 to the new notice of intent as well as all previously approved notices of intent and
36 shall determine the application of the definitions of new job, new payroll, project facility base
37 employment, and project facility base payroll accordingly.

38 2. Notwithstanding any provision of law to the contrary, the benefits available to the
39 qualified company under any other state programs for which the company is eligible and
40 which utilize withholding tax from the new or retained jobs of the company shall first be
41 credited to the other state program before the withholding retention level applicable under this
42 program will begin to accrue. If any qualified company also participates in a job training
43 program utilizing withholding tax, the company shall retain no withholding tax under this
44 program, but the department shall issue a refundable tax credit for the full amount of benefit
45 allowed under this program. The calendar year annual maximum amount of tax credits which
46 may be issued to a qualifying company that also participates in a job training program shall be
47 increased by an amount equivalent to the withholding tax retained by that company under a
48 jobs training program.

49 3. A qualified company or qualified military project receiving benefits under this
50 program shall provide an annual report of the number of jobs, along with minority jobs
51 created or retained, and such other information as may be required by the department to
52 document the basis for program benefits available no later than ninety days prior to the end of
53 the qualified company's or industrial development authority's tax year immediately following
54 the tax year for which the benefits provided under the program are attributed. In such annual

55 report, if the average wage is below the applicable percentage of the county average wage, the
56 qualified company or qualified military project has not maintained the employee insurance as
57 required, if the department after a review determines the qualifying company fails to satisfy
58 other aspects of their notice of intent, including failure to make good faith efforts to employ,
59 at a minimum, commensurate with the percentage of minority populations in the state of
60 Missouri, as reported in the previous decennial census, the following: racial minorities,
61 contractors who are racial minorities, and contractors that, in turn, employ at a minimum
62 racial minorities commensurate with the percentage of minority populations in the state of
63 Missouri, as reported in the previous decennial census, or if the number of jobs is below the
64 number required, the qualified company or qualified military project shall not receive tax
65 credits or retain the withholding tax for the balance of the project period. If a statewide state
66 of emergency exists for more than sixteen months, a qualified company or industrial
67 development authority shall be entitled to a one-time suspension of program deadlines equal
68 to the number of months such statewide state of emergency existed with any partial month
69 rounded to the next whole. During such suspension, the qualified company or industrial
70 development authority shall not be entitled to retain any withholding tax as calculated under
71 subdivision (38) of section 620.2005 nor shall it earn any awarded tax credit or receive any
72 tax credit under the program for the suspension period. The suspension period shall run
73 consecutively and be available to a qualified company or industrial development authority
74 that, during the statewide state of emergency, submitted notice of intent that was approved or
75 that was in year one or a subsequent year of benefits under a program agreement with the
76 department. The suspension period that runs consecutively and may be available to a
77 qualified company or industrial development authority as provided in this subsection may
78 apply retroactively. Any qualified company or industrial development authority requesting a
79 suspension pursuant to this subsection shall submit notice to the department on its provided
80 form identifying the requested start and end dates of the suspension, not to exceed the
81 maximum number of months available under this subsection. Such notice shall be submitted
82 to the department not later than the end of the twelfth month following the termination of the
83 state of emergency. No suspension period shall start later than the date on which the state of
84 emergency was terminated. The department and the qualified company or the industrial
85 development authority shall enter into a program agreement or shall amend an existing
86 program agreement, as applicable, stating the deadlines following the suspension period and
87 updating the applicable wage requirements. Failure to timely file the annual report required
88 under this section may result in the forfeiture of tax credits attributable to the year for which
89 the reporting was required and a recapture of withholding taxes retained by the qualified
90 company or qualified military project during such year.

91 4. The department may withhold the approval of any benefits under this program until
92 it is satisfied that proper documentation has been provided, and shall reduce the benefits to
93 reflect any reduction in full-time employees or payroll. Upon approval by the department, the
94 qualified company may begin the retention of the withholding taxes when it reaches the
95 required number of jobs and the average wage meets or exceeds the applicable percentage of
96 county average wage. Tax credits, if any, may be issued upon satisfaction by the department
97 that the qualified company has exceeded the applicable percentage of county average wage
98 and the required number of jobs; provided that, tax credits awarded under subsection 7 of
99 section 620.2010 may be issued following the qualified company's acceptance of the
100 department's proposal and pursuant to the requirements set forth in the written agreement
101 between the department and the qualified company under subsection 4 of section 620.2010.

102 5. Any qualified company or qualified military project approved for benefits under
103 this program shall provide to the department, upon request, any and all information and
104 records reasonably required to monitor compliance with program requirements. This
105 program shall be considered a business recruitment tax credit under subdivision (3) of
106 subsection 2 of section 135.800, and any qualified company or qualified military project
107 approved for benefits under this program shall be subject to the provisions of sections
108 135.800 to 135.830.

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

113 7. (1) The maximum amount of tax credits that may be authorized under this program
114 for any fiscal year shall be limited as follows, less the amount of any tax credits previously
115 obligated for that fiscal year under any of the tax credit programs referenced in subsection 14
116 of this section:

117 (a) For the fiscal year beginning on July 1, 2013, but ending on or before June 30,
118 2014, no more than one hundred six million dollars in tax credits may be authorized;

119 (b) For the fiscal year beginning on July 1, 2014, but ending on or before June 30,
120 2015, no more than one hundred eleven million dollars in tax credits may be authorized;

121 (c) For fiscal years beginning on or after July 1, 2015, but ending on or before June
122 30, 2020, no more than one hundred sixteen million dollars in tax credits may be authorized
123 for each fiscal year; and

124 (d) For all fiscal years beginning on or after July 1, 2020, no more than one hundred
125 six million dollars in tax credits may be authorized for each fiscal year. The provisions of this
126 paragraph shall not apply to tax credits issued to qualified companies under a notice of intent
127 filed prior to July 1, 2020.

128 (2) For all fiscal years beginning on or after July 1, 2020, in addition to the amount of
129 tax credits that may be authorized under paragraph (d) of subdivision (1) of this subsection,
130 an additional ten million dollars in tax credits may be authorized for each fiscal year for the
131 purpose of the completion of infrastructure projects directly connected with the creation or
132 retention of jobs under the provisions of sections 620.2000 to 620.2020 and an additional ten
133 million dollars in tax credits may be authorized for each fiscal year for a qualified
134 manufacturing company based on a manufacturing capital investment as set forth in section
135 620.2010.

136 8. For all fiscal years beginning on or after July 1, 2020, the maximum total amount
137 of withholding tax that may be authorized for retention for the creation of new jobs under the
138 provisions of sections 620.2000 to 620.2020 by qualified companies with a project facility
139 base employment of at least fifty shall not exceed seventy-five million dollars for each fiscal
140 year. The provisions of this subsection shall not apply to withholding tax authorized for
141 retention for the creation of new jobs by qualified companies with a project facility base
142 employment of less than fifty.

143 9. For tax credits for the creation of new jobs under section 620.2010, the department
144 shall allocate the annual tax credits based on the date of the approval, reserving such tax
145 credits based on the department's best estimate of new jobs and new payroll of the project,
146 and any other applicable factors in determining the amount of benefits available to the
147 qualified company or qualified military project under this program; provided that, the
148 department may reserve up to twenty-one and one-half percent of the maximum annual
149 amount of tax credits that may be authorized under subsection 7 of this section for award
150 under subsection 7 of section 620.2010. However, the annual issuance of tax credits shall be
151 subject to annual verification of actual payroll by the department or, for qualified military
152 projects, annual verification of average salary for the jobs directly created by the qualified
153 military project. Any authorization of tax credits shall expire if, within two years from the
154 date of commencement of operations, or approval if applicable, the qualified company has
155 failed to meet the applicable minimum job requirements. The qualified company may retain
156 authorized amounts from the withholding tax under the project once the applicable minimum
157 job requirements have been met for the duration of the project period. No benefits shall be
158 provided under this program until the qualified company or qualified military project meets
159 the applicable minimum new job requirements or, for benefits awarded under subsection 7 of
160 section 620.2010, until the qualified company has satisfied the requirements set forth in the
161 written agreement between the department and the qualified company under subsection 4 of
162 section 620.2010. In the event the qualified company or qualified military project does not
163 meet the applicable minimum new job requirements, the qualified company or qualified
164 military project may submit a new notice of intent or the department may provide a new

165 approval for a new project of the qualified company or qualified military project at the project
166 facility or other facilities.

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

177 11. Prior to the issuance of tax credits or the qualified company beginning to retain
178 withholding taxes, the department shall verify through the department of revenue and any
179 other applicable state department that the tax credit applicant does not owe any delinquent
180 income, sales, or use tax or interest or penalties on such taxes, or any delinquent fees or
181 assessments levied by any state department and through the department of commerce and
182 insurance that the applicant does not owe any delinquent insurance taxes or other fees. Such
183 delinquency shall not affect the approval, except that any tax credits issued shall be first
184 applied to the delinquency and any amount issued shall be reduced by the applicant's tax
185 delinquency. If the department of revenue, the department of commerce and insurance, or any
186 other state department concludes that a taxpayer is delinquent after June fifteenth but before
187 July first of any year and the application of tax credits to such delinquency causes a tax
188 deficiency on behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to
189 satisfy the deficiency in which interest, penalties, and additions to tax shall be tolled. After
190 applying all available credits toward a tax delinquency, the administering agency shall notify
191 the appropriate department and that department shall update the amount of outstanding
192 delinquent tax owed by the applicant. If any credits remain after satisfying all insurance,
193 income, sales, and use tax delinquencies, the remaining credits shall be issued to the
194 applicant, subject to the restrictions of other provisions of law.

195 12. The director of revenue shall issue a refund to the qualified company to the extent
196 that the amount of tax credits allowed under this program exceeds the amount of the qualified
197 company's tax liability under chapter 143 or 148.

198 13. An employee of a qualified company shall receive full credit for the amount of tax
199 withheld as provided in section 143.211.

200 14. Notwithstanding any provision of law to the contrary, beginning August 28, 2013,
201 no new benefits shall be authorized for any project that had not received from the department

202 a proposal or approval for such benefits prior to August 28, 2013, under the development tax
203 credit program created under sections 32.100 to 32.125, the rebuilding communities tax credit
204 program created under section 135.535, the enhanced enterprise zone tax credit program
205 created under sections 135.950 to 135.973, and the Missouri quality jobs program created
206 under sections 620.1875 to 620.1890. The provisions of this subsection shall not be
207 construed to limit or impair the ability of any administering agency to authorize or issue
208 benefits for any project that had received an approval or a proposal from the department under
209 any of the programs referenced in this subsection prior to August 28, 2013, or the ability of
210 any taxpayer to redeem any such tax credits or to retain any withholding tax under an
211 approval issued prior to that date. The provisions of this subsection shall not be construed to
212 limit or in any way impair the ability of any governing authority to provide any local
213 abatement or designate a new zone under the enhanced enterprise zone program created by
214 sections 135.950 to 135.963. Notwithstanding any provision of law to the contrary, no
215 qualified company that is awarded benefits under this program shall:

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

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

219 15. If any provision of sections 620.2000 to 620.2020 or application thereof to any
220 person or circumstance is held invalid, the invalidity shall not affect other provisions or
221 application of these sections which can be given effect without the invalid provisions or
222 application, and to this end, the provisions of sections 620.2000 to 620.2020 are hereby
223 declared severable.

224 16. By no later than January 1, 2014, and the first day of each calendar quarter
225 thereafter, the department shall present a quarterly report to the general assembly detailing the
226 benefits authorized under this program during the immediately preceding calendar quarter to
227 the extent such information may be disclosed under state and federal law. The report shall
228 include, at a minimum:

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

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

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

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

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

239 17. The department may adopt such rules, statements of policy, procedures, forms,
240 and guidelines as may be necessary to carry out the provisions of sections 620.2000 to
241 620.2020. Any rule or portion of a rule, as that term is defined in section 536.010, that is
242 created under the authority delegated in this section shall become effective only if it complies
243 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
244 This section and chapter 536 are nonseverable and if any of the powers vested with the
245 general assembly pursuant to chapter 536 to review, to delay the effective date, or to
246 disapprove and annul a rule are subsequently held unconstitutional, then the grant of
247 rulemaking authority and any rule proposed or adopted after August 28, 2013, shall be invalid
248 and void.

249 18. Under section 23.253 of the Missouri sunset act:

250 (1) The provisions of the program authorized under sections 620.2000 to 620.2020
251 shall be reauthorized as of August 28, ~~[2018]~~ **2025**, and shall expire on August 28, ~~[2030]~~
252 **2037**; and

253 (2) If such program is reauthorized, the program authorized under this section shall
254 automatically sunset twelve years after the effective date of the reauthorization of sections
255 620.2000 to 620.2020; and

256 (3) Sections 620.2000 to 620.2020 shall terminate on September first of the calendar
257 year immediately following the calendar year in which the program authorized under sections
258 620.2000 to 620.2020 is sunset.

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