

SECOND REGULAR SESSION

SENATE BILL NO. 1092

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOSKINS.

5372S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 620.2020, RSMo, and to enact in lieu thereof one new section relating to tax credit requirements during certain statewide emergencies.

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

Section A. Section 620.2020, RSMo, is repealed and one
2 new section enacted in lieu thereof, to be known as section
3 620.2020, to read as follows:

620.2020. 1. The department shall respond to a
2 written request, by or on behalf of a qualified company or
3 qualified military project, for a proposed benefit award
4 under the provisions of this program within five business
5 days of receipt of such request. The department shall
6 respond to a written request, by or on behalf of a qualified
7 manufacturing company, for a proposed benefit award under
8 the provisions of this program within fifteen business days
9 of receipt of such request. Such response shall contain
10 either a proposal of benefits for the qualified company or
11 qualified military project, or a written response refusing
12 to provide such a proposal and stating the reasons for such
13 refusal. A qualified company or qualified military project
14 that intends to seek benefits under the program shall submit
15 to the department a notice of intent. The department shall
16 respond within thirty days to a notice of intent with an
17 approval or a rejection, provided that the department may
18 withhold approval or provide a contingent approval until it

19 is satisfied that proper documentation of eligibility has
20 been provided. The department shall certify or reject the
21 qualifying company's plan outlined in their notice of intent
22 as satisfying good faith efforts made to employ, at a
23 minimum, commensurate with the percentage of minority
24 populations in the state of Missouri, as reported in the
25 previous decennial census, the following: racial minorities,
26 contractors who are racial minorities, and contractors that,
27 in turn, employ at a minimum racial minorities commensurate
28 with the percentage of minority populations in the state of
29 Missouri, as reported in the previous decennial census.
30 Failure to respond on behalf of the department shall result
31 in the notice of intent being deemed approved. A qualified
32 company receiving approval for program benefits may receive
33 additional benefits for subsequent new jobs at the same
34 facility after the full initial project period if the
35 applicable minimum job requirements are met. There shall be
36 no limit on the number of project periods a qualified
37 company may participate in the program, and a qualified
38 company may elect to file a notice of intent to begin a new
39 project period concurrent with an existing project period if
40 the applicable minimum job requirements are achieved, the
41 qualified company provides the department with the required
42 annual reporting, and the qualified company is in compliance
43 with this program and any other state programs in which the
44 qualified company is currently or has previously
45 participated. However, the qualified company shall not
46 receive any further program benefits under the original
47 approval for any new jobs created after the date of the new
48 notice of intent, and any jobs created before the new notice
49 of intent shall not be included as new jobs for purposes of
50 the benefit calculation for the new approval. When a

51 qualified company has filed and received approval of a
52 notice of intent and subsequently files another notice of
53 intent, the department shall apply the definition of project
54 facility under subdivision (24) of section 620.2005 to the
55 new notice of intent as well as all previously approved
56 notices of intent and shall determine the application of the
57 definitions of new job, new payroll, project facility base
58 employment, and project facility base payroll accordingly.

59 2. Notwithstanding any provision of law to the
60 contrary, the benefits available to the qualified company
61 under any other state programs for which the company is
62 eligible and which utilize withholding tax from the new or
63 retained jobs of the company shall first be credited to the
64 other state program before the withholding retention level
65 applicable under this program will begin to accrue. If any
66 qualified company also participates in a job training
67 program utilizing withholding tax, the company shall retain
68 no withholding tax under this program, but the department
69 shall issue a refundable tax credit for the full amount of
70 benefit allowed under this program. The calendar year
71 annual maximum amount of tax credits which may be issued to
72 a qualifying company that also participates in a job
73 training program shall be increased by an amount equivalent
74 to the withholding tax retained by that company under a jobs
75 training program.

76 3. A qualified company or qualified military project
77 receiving benefits under this program shall provide an
78 annual report of the number of jobs, along with minority
79 jobs created or retained, and such other information as may
80 be required by the department to document the basis for
81 program benefits available no later than ninety days prior
82 to the end of the qualified company's or industrial

83 development authority's tax year immediately following the
84 tax year for which the benefits provided under the program
85 are attributed. In such annual report, if the average wage
86 is below the applicable percentage of the county average
87 wage, the qualified company or qualified military project
88 has not maintained the employee insurance as required, if
89 the department after a review determines the qualifying
90 company fails to satisfy other aspects of their notice of
91 intent, including failure to make good faith efforts to
92 employ, at a minimum, commensurate with the percentage of
93 minority populations in the state of Missouri, as reported
94 in the previous decennial census, the following: racial
95 minorities, contractors who are racial minorities, and
96 contractors that, in turn, employ at a minimum racial
97 minorities commensurate with the percentage of minority
98 populations in the state of Missouri, as reported in the
99 previous decennial census, or if the number of jobs is below
100 the number required, the qualified company or qualified
101 military project shall not receive tax credits or retain the
102 withholding tax for the balance of the project period. **In**
103 **the event a statewide state of emergency exists for more**
104 **than sixteen months of the qualified company's or industrial**
105 **development authority's tax year and the number of jobs**
106 **reported is below the number required for such year, the**
107 **qualified company or qualified military project shall not be**
108 **prohibited from receiving tax credits or retaining the**
109 **withholding tax, or both, if applicable, for the balance of**
110 **the project period solely on that basis when all other**
111 **program requirements are met.** Failure to timely file the
112 annual report required under this section shall result in
113 the forfeiture of tax credits attributable to the year for
114 which the reporting was required and a recapture of

115 withholding taxes retained by the qualified company or
116 qualified military project during such year.

117 4. The department may withhold the approval of any
118 benefits under this program until it is satisfied that
119 proper documentation has been provided, and shall reduce the
120 benefits to reflect any reduction in full-time employees or
121 payroll. Upon approval by the department, the qualified
122 company may begin the retention of the withholding taxes
123 when it reaches the required number of jobs and the average
124 wage meets or exceeds the applicable percentage of county
125 average wage. Tax credits, if any, may be issued upon
126 satisfaction by the department that the qualified company
127 has exceeded the applicable percentage of county average
128 wage and the required number of jobs; provided that, tax
129 credits awarded under subsection 7 of section 620.2010 may
130 be issued following the qualified company's acceptance of
131 the department's proposal and pursuant to the requirements
132 set forth in the written agreement between the department
133 and the qualified company under subsection 4 of section
134 620.2010.

135 5. Any qualified company or qualified military project
136 approved for benefits under this program shall provide to
137 the department, upon request, any and all information and
138 records reasonably required to monitor compliance with
139 program requirements. This program shall be considered a
140 business recruitment tax credit under subdivision (4) of
141 subsection 2 of section 135.800, and any qualified company
142 or qualified military project approved for benefits under
143 this program shall be subject to the provisions of sections
144 135.800 to 135.830.

145 6. Any taxpayer who is awarded benefits under this
146 program who knowingly hires individuals who are not allowed

147 to work legally in the United States shall immediately
148 forfeit such benefits and shall repay the state an amount
149 equal to any state tax credits already redeemed and any
150 withholding taxes already retained.

151 7. (1) The maximum amount of tax credits that may be
152 authorized under this program for any fiscal year shall be
153 limited as follows, less the amount of any tax credits
154 previously obligated for that fiscal year under any of the
155 tax credit programs referenced in subsection 14 of this
156 section:

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

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

163 (c) For fiscal years beginning on or after July 1,
164 2015, but ending on or before June 30, 2020, no more than
165 one hundred sixteen million dollars in tax credits may be
166 authorized for each fiscal year; and

167 (d) For all fiscal years beginning on or after July 1,
168 2020, no more than one hundred six million dollars in tax
169 credits may be authorized for each fiscal year. The
170 provisions of this paragraph shall not apply to tax credits
171 issued to qualified companies under a notice of intent filed
172 prior to July 1, 2020.

173 (2) For all fiscal years beginning on or after July 1,
174 2020, in addition to the amount of tax credits that may be
175 authorized under paragraph (d) of subdivision (1) of this
176 subsection, an additional ten million dollars in tax credits
177 may be authorized for each fiscal year for the purpose of
178 the completion of infrastructure projects directly connected

179 with the creation or retention of jobs under the provisions
180 of sections 620.2000 to 620.2020 and an additional ten
181 million dollars in tax credits may be authorized for each
182 fiscal year for a qualified manufacturing company based on a
183 manufacturing capital investment as set forth in section
184 620.2010.

185 8. For all fiscal years beginning on or after July 1,
186 2020, the maximum total amount of withholding tax that may
187 be authorized for retention for the creation of new jobs
188 under the provisions of sections 620.2000 to 620.2020 by
189 qualified companies with a project facility base employment
190 of at least fifty shall not exceed seventy-five million
191 dollars for each fiscal year. The provisions of this
192 subsection shall not apply to withholding tax authorized for
193 retention for the creation of new jobs by qualified
194 companies with a project facility base employment of less
195 than fifty.

196 9. For tax credits for the creation of new jobs under
197 section 620.2010, the department shall allocate the annual
198 tax credits based on the date of the approval, reserving
199 such tax credits based on the department's best estimate of
200 new jobs and new payroll of the project, and any other
201 applicable factors in determining the amount of benefits
202 available to the qualified company or qualified military
203 project under this program; provided that, the department
204 may reserve up to twenty-one and one-half percent of the
205 maximum annual amount of tax credits that may be authorized
206 under subsection 7 of this section for award under
207 subsection 7 of section 620.2010. However, the annual
208 issuance of tax credits shall be subject to annual
209 verification of actual payroll by the department or, for
210 qualified military projects, annual verification of average

211 salary for the jobs directly created by the qualified
212 military project. Any authorization of tax credits shall
213 expire if, within two years from the date of commencement of
214 operations, or approval if applicable, the qualified company
215 has failed to meet the applicable minimum job requirements.
216 The qualified company may retain authorized amounts from the
217 withholding tax under the project once the applicable
218 minimum job requirements have been met for the duration of
219 the project period. No benefits shall be provided under
220 this program until the qualified company or qualified
221 military project meets the applicable minimum new job
222 requirements or, for benefits awarded under subsection 7 of
223 section 620.2010, until the qualified company has satisfied
224 the requirements set forth in the written agreement between
225 the department and the qualified company under subsection 4
226 of section 620.2010. In the event the qualified company or
227 qualified military project does not meet the applicable
228 minimum new job requirements, the qualified company or
229 qualified military project may submit a new notice of intent
230 or the department may provide a new approval for a new
231 project of the qualified company or qualified military
232 project at the project facility or other facilities.

233 10. Tax credits provided under this program may be
234 claimed against taxes otherwise imposed by chapters 143 and
235 148, and may not be carried forward, but shall be claimed
236 within one year of the close of the taxable year for which
237 they were issued. Tax credits provided under this program
238 may be transferred, sold, or assigned by filing a notarized
239 endorsement thereof with the department that names the
240 transferee, the amount of tax credit transferred, and the
241 value received for the credit, as well as any other
242 information reasonably requested by the department. For a

243 qualified company with flow-through tax treatment to its
244 members, partners, or shareholders, the tax credit shall be
245 allowed to members, partners, or shareholders in proportion
246 to their share of ownership on the last day of the qualified
247 company's tax period.

248 11. Prior to the issuance of tax credits or the
249 qualified company beginning to retain withholding taxes, the
250 department shall verify through the department of revenue
251 and any other applicable state department that the tax
252 credit applicant does not owe any delinquent income, sales,
253 or use tax or interest or penalties on such taxes, or any
254 delinquent fees or assessments levied by any state
255 department and through the department of commerce and
256 insurance that the applicant does not owe any delinquent
257 insurance taxes or other fees. Such delinquency shall not
258 affect the approval, except that any tax credits issued
259 shall be first applied to the delinquency and any amount
260 issued shall be reduced by the applicant's tax delinquency.
261 If the department of revenue, the department of commerce and
262 insurance, or any other state department concludes that a
263 taxpayer is delinquent after June fifteenth but before July
264 first of any year and the application of tax credits to such
265 delinquency causes a tax deficiency on behalf of the
266 taxpayer to arise, then the taxpayer shall be granted thirty
267 days to satisfy the deficiency in which interest, penalties,
268 and additions to tax shall be tolled. After applying all
269 available credits toward a tax delinquency, the
270 administering agency shall notify the appropriate department
271 and that department shall update the amount of outstanding
272 delinquent tax owed by the applicant. If any credits remain
273 after satisfying all insurance, income, sales, and use tax
274 delinquencies, the remaining credits shall be issued to the

275 applicant, subject to the restrictions of other provisions
276 of law.

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

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

284 14. Notwithstanding any provision of law to the
285 contrary, beginning August 28, 2013, no new benefits shall
286 be authorized for any project that had not received from the
287 department a proposal or approval for such benefits prior to
288 August 28, 2013, under the development tax credit program
289 created under sections 32.100 to 32.125, the rebuilding
290 communities tax credit program created under section
291 135.535, the enhanced enterprise zone tax credit program
292 created under sections 135.950 to 135.973, and the Missouri
293 quality jobs program created under sections 620.1875 to
294 620.1890. The provisions of this subsection shall not be
295 construed to limit or impair the ability of any
296 administering agency to authorize or issue benefits for any
297 project that had received an approval or a proposal from the
298 department under any of the programs referenced in this
299 subsection prior to August 28, 2013, or the ability of any
300 taxpayer to redeem any such tax credits or to retain any
301 withholding tax under an approval issued prior to that
302 date. The provisions of this subsection shall not be
303 construed to limit or in any way impair the ability of any
304 governing authority to provide any local abatement or
305 designate a new zone under the enhanced enterprise zone
306 program created by sections 135.950 to 135.963.

307 Notwithstanding any provision of law to the contrary, no
308 qualified company that is awarded benefits under this
309 program shall:

310 (1) Simultaneously receive benefits under the programs
311 referenced in this subsection at the same capital
312 investment; or

313 (2) Receive benefits under the provisions of section
314 620.1910 for the same jobs.

315 15. If any provision of sections 620.2000 to 620.2020
316 or application thereof to any person or circumstance is held
317 invalid, the invalidity shall not affect other provisions or
318 application of these sections which can be given effect
319 without the invalid provisions or application, and to this
320 end, the provisions of sections 620.2000 to 620.2020 are
321 hereby declared severable.

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

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

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

334 (3) A statement of the aggregate amount of new capital
335 investment directly attributable to the tax credits
336 authorized;

337 (4) Documentation of the estimated net state fiscal
338 benefit for each authorized project and, to the extent

339 available, the actual benefit realized upon completion of
340 such project or activity; and

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

343 17. The department may adopt such rules, statements of
344 policy, procedures, forms, and guidelines as may be
345 necessary to carry out the provisions of sections 620.2000
346 to 620.2020. Any rule or portion of a rule, as that term is
347 defined in section 536.010, that is created under the
348 authority delegated in this section shall become effective
349 only if it complies with and is subject to all of the
350 provisions of chapter 536 and, if applicable, section
351 536.028. This section and chapter 536 are nonseverable and
352 if any of the powers vested with the general assembly
353 pursuant to chapter 536 to review, to delay the effective
354 date, or to disapprove and annul a rule are subsequently
355 held unconstitutional, then the grant of rulemaking
356 authority and any rule proposed or adopted after August 28,
357 2013, shall be invalid and void.

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

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

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

366 (3) Sections 620.2000 to 620.2020 shall terminate on
367 September first of the calendar year immediately following
368 the calendar year in which the program authorized under
369 sections 620.2000 to 620.2020 is sunset.

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