

SECOND REGULAR SESSION

SENATE BILL NO. 724

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3351S.01I

AN ACT

To amend chapter 620, RSMo, by adding thereto eight 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 eight new sections, to be known as sections 620.3500, 620.3505, 620.3510, 620.3515, 620.3520, 620.3525, 620.3530, and 620.3531, 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;

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

19 allowance date; and

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

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

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

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

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

34 (b) Has its principal business operations in one or more rural
35 areas in this state.

36 Any business which is classified as an eligible business at the time of
37 the initial investment in such business by a rural fund shall remain
38 classified as an eligible business and may receive follow-on investments
39 from any rural fund, and such follow-on investments shall be qualified
40 investments even though such business may not meet the definition of
41 an eligible business at the time of such follow-on investments;

42 (7) "Full-time job", a job in this state that is:

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

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

47 (c) A part-time equivalent;

48 (8) "Jobs created", the number of full-time jobs added by an
49 eligible business during each twelve-month period following the date
50 of a rural fund's initial qualified investment; provided, however, that
51 if the number calculated is less than zero, such number shall be
52 reported as zero;

53 (9) "Jobs retained", any full-time jobs that existed at an eligible
54 business prior to a rural fund's initial qualified investment that are
55 retained by an eligible business following a rural fund's initial

56 **qualified investment, calculated annually. The reported number of jobs**
57 **retained for a year shall only include full-time jobs that would have**
58 **been lost or moved out of this state had the qualified investment not**
59 **been made, as certified in writing by affidavit by an executive officer**
60 **of the eligible business, and may not exceed the number reported on**
61 **the initial report under section 620.3530;**

62 **(10) "Part-time equivalent", the number of part-time employees**
63 **working less than thirty-five hours per week employed by an eligible**
64 **business equivalent to one full-time job, calculated by taking the**
65 **weekly average hours worked by part-time employees for a week**
66 **aggregated to determine the number of full-time equivalent jobs;**

67 **(11) "Principal business operations", the location where at least**
68 **sixty percent of a business's employees work or where employees who**
69 **are paid at least sixty percent of such business's payroll work. A**
70 **business that has agreed to relocate employees using the proceeds of**
71 **a qualified investment to establish its principal business operations in**
72 **a new location shall be deemed to have its principal business**
73 **operations in such new location if it satisfied the requirements of this**
74 **subdivision no later than one hundred eighty days after receiving a**
75 **qualified investment;**

76 **(12) "Purchase price", the amount paid to the rural fund that**
77 **issues a capital investment which shall not exceed the amount of**
78 **capital investment authority certified under the provisions of section**
79 **620.3510;**

80 **(13) "Qualified investment", any investment in an eligible**
81 **business or any loan to an eligible business with a stated maturity date**
82 **of at least one year after the date of issuance, not including investment**
83 **in the form of revolving lines of credit and senior secured debt unless**
84 **the eligible business has a credit refusal letter or similar**
85 **correspondence from a depository institution or a referral letter or**
86 **similar correspondence from a depository institution referring the**
87 **business to a rural fund; provided that, with respect to any one eligible**
88 **business, the maximum amount of investments made in such business**
89 **by one or more rural funds, on a collective basis with all of the**
90 **businesses' affiliates, with the proceeds of capital investments shall be**
91 **the greater of twenty percent of the rural fund's capital investment**
92 **authority or six million five hundred thousand dollars, exclusive of**

93 investments made with repaid or redeemed investments or interest or
94 profits realized thereon;

95 (14) "Rural area", any county of this state that has a population
96 of less than ninety thousand according to the 2010 decennial census of
97 the United States;

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

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

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

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

7 (1) The amount of capital investment requested;

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

14 (3) Evidence that, as of the date the application is submitted, the
15 applicant or affiliates of the applicant have invested at least one
16 hundred million dollars in nonpublic companies located in counties
17 within the United States with a population of less than fifty thousand
18 according to the 2010 decennial census of United States;

19 (4) A business plan that includes a revenue impact assessment
20 projecting state and local tax revenue to be generated by the

21 applicant's proposed qualified investments, prepared by a nationally
22 recognized, third-party, independent economic forecasting firm using
23 a dynamic economic forecasting model that analyzes the applicant's
24 business plan over the ten years following the date the application is
25 submitted to the department. Such plan shall include an estimate of
26 the number of jobs created and jobs retained in this state as a result of
27 the applicant's qualified investments; and

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

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

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

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

40 (3) The department has already approved the maximum amount
41 of capital investment authority under section 620.3515.

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

51 4. Upon approval of an application, the department shall certify
52 the proposed equity investment as a capital investment eligible for
53 credits under sections 620.3500 to 620.3530, subject to the limitations
54 contained in section 620.3515. The department shall provide written
55 notice of the certification to the rural fund and include the aggregate
56 number of jobs created and jobs retained required of the rural fund
57 with such amount set forth in the rural fund's business plan prorated

58 based on the amount of capital investment actually certified to the
59 rural fund by the department. The department shall certify capital
60 investments in the order that the applications are received by the
61 department. Applications received on the same day shall be deemed to
62 have been received simultaneously. For applications that are complete
63 and received on the same day, the department shall certify applications
64 in proportionate percentages based upon the ratio of the amount of
65 capital investment authority requested in an application to the total
66 amount of capital investment authority requested in all applications.

620.3515. 1. The department may certify capital investment
2 authority under the provisions of sections 620.3500 to 620.3530 in
3 amounts that would authorize not more than twenty-five million dollars
4 in state tax credits to be claimed against state tax liability in any
5 calendar year, excluding any credit amounts carried forward as
6 provided under subsection 1 of section 620.3520. Within ninety days of
7 the applicant receiving notice of certification, the rural fund shall issue
8 the capital investment to, and receive cash in the amount of the
9 certified amount from, a rural investor. At least ten percent of the
10 rural investor's capital investment shall be composed of capital raised
11 by the rural investor from sources, including directors, members,
12 employees, officers, and affiliates of the rural investor, other than the
13 amount invested by the allocatee claiming the tax credits in exchange
14 for such allocation of tax credits. The rural fund shall provide the
15 department with evidence of the receipt of the cash investment within
16 ninety-five days of the applicant receiving notice of certification.

17 2. If the rural fund does not receive the cash investment and
18 issue the capital investment within such time period following receipt
19 of the certification notice, the certification shall lapse and the rural
20 fund shall not issue the capital investment without reapplying to the
21 department for certification. Lapsed certifications shall revert to the
22 department and shall be reissued pro rata to applicants whose capital
23 investment allocations were reduced in accordance with the application
24 process provided under subdivision (4) of subsection 3 of section
25 620.3520.

26 3. A rural fund, before making a qualified investment, may
27 request from the department a written opinion as to whether the
28 business in which it proposes to invest is an eligible business. The

29 department, not later than the fifteenth business day after the date of
30 receipt of such request, shall notify the rural fund of its determination.
31 If the department fails to notify the rural fund of its determination by
32 the twentieth business day, the business in which the rural fund
33 proposes to invest shall be deemed an eligible business.

620.3520. 1. Upon making a capital investment in a rural fund,
2 a rural investor shall have a vested right to a credit against such
3 entity's state tax liability that may be utilized on each credit allowance
4 date of such capital investment in an amount equal to the applicable
5 percentage for such credit allowance date multiplied by the purchase
6 price paid to the rural fund for the capital investment. The amount of
7 the credit claimed by a rural investor shall not exceed the amount of
8 such entity's state tax liability for the tax year for which the credit is
9 claimed. Any amount of credit that a rural investor is prohibited from
10 claiming in a taxable year as a result of this section may be carried
11 forward for use in any of the five subsequent taxable years, and shall
12 not be carried back to prior taxable years.

13 2. No credit claimed under the provisions of sections 620.3500 to
14 620.3530 shall be refundable. Credits earned by or allocated to a
15 partnership, limited liability company, or S-corporation may be
16 allocated to the partners, members, or shareholders of such entity for
17 their direct use in accordance with the provisions of any agreement
18 among such partners, members, or shareholders, and a rural fund shall
19 notify the department of the names of the entities that are eligible to
20 utilize credits pursuant to an allocation of credits or a change in
21 allocation of credits, or due to a transfer of a capital investment upon
22 such allocation, change, or transfer. Such allocation shall not be
23 considered a sale for the purposes of this section.

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

26 (1) The rural fund does not invest sixty percent of its capital
27 investment authority in qualified investments in this state within two
28 years of the credit allowance date, and one hundred percent of its
29 capital investment authority in qualified investments in this state
30 within three years of the credit allowance date;

31 (2) The rural fund fails to maintain qualified investments equal
32 to ninety percent of its capital investment authority from the third

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

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

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

61 For the purposes of meeting and maintaining the objectives established
62 for investment in subdivisions (1) and (2) of this subsection, a rural
63 fund's qualified investments shall be multiplied by a factor of one and
64 a quarter in counties with less than thirty thousand in population and
65 more than thirteen thousand in population and shall be multiplied by
66 a factor of one and a half in counties with a population of thirteen
67 thousand or less.

68 4. Recaptured credits and the related capital investment
69 authority shall revert to the department and shall be reissued pro rata

70 to applicants whose capital investment allocations were reduced in
71 accordance with the application process provided under subsection 4
72 of section 620.3510.

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

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

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

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

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

6 (1) The name and location of each eligible business receiving a
7 qualified investment;

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

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

14 (4) The number of jobs created and jobs retained as a result of
15 qualified investments as of the first, second, and third anniversaries of
16 the initial credit allowance date;

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

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

20 2. For all subsequent years, rural funds shall submit an annual

21 report to the department within ninety days of the beginning of the
22 calendar year during the compliance period. The report shall include,
23 but is not limited to, the following:

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

26 (2) The average annual salary of the jobs created and retained
27 as a result of qualified investments; and

28 (3) Such other information as required by the department.

29 3. If at any time on or after the sixth anniversary of the credit
30 allowance date a rural fund satisfies the jobs created and jobs retained
31 amounts required in such fund's notice of certification as provided
32 under subsection 4 of section 620.3510, then such rural fund shall no
33 longer be subject to regulation under the provisions of sections
34 620.3500 to 620.3530 and may exit the program by providing written
35 notice to the department certifying such rural fund has met its
36 requirements and will be exiting the program.

37 4. A rural fund not meeting the job requirements may apply to
38 the department to exit the program and no longer be subject to the
39 regulation under the provisions of sections 620.3500 to 620.3530 by
40 paying the penalties provided under subsection 5 of this section, as
41 applicable. The department shall respond to the exit application within
42 fifteen days of receipt. In evaluating the exit application, the fact that
43 no credits have been recaptured and that the rural fund has not
44 received a notice of recapture that has not been cured pursuant to
45 subsection 5 of section 620.3520 shall be sufficient evidence to prove
46 that the rural fund is eligible for exit. The department shall not
47 unreasonably deny an exit application submitted under this subsection.
48 If the exit application is denied, the notice shall include the reasons for
49 such determination.

50 5. (1) A rural fund is subject to a penalty in the amount provided
51 under subdivision (2) of this subsection if:

52 (a) The rural fund authorizes a distribution to the rural fund's
53 equity holders in an amount that, when added to all previous
54 distributions to the rural fund's equity holders and any previous
55 penalties under this section, exceeds the rural fund's capital investment
56 authority; and

57 (b) The number of jobs created and jobs retained as a result of

58 the rural fund's qualified investments, as reported on the rural fund's
59 reports, is less than the number of jobs created and jobs retained
60 included in such rural fund's notice of certification as provided under
61 subsection 4 of section 620.3510.

62 (2) The amount of the penalty shall be equal to the amount of the
63 distribution or fee paid by the rural fund that exceeds the rural fund's
64 capital investment authority and multiplying such excess amount by a
65 fraction:

66 (a) The numerator of which is the number of jobs created and
67 jobs retained included in the rural fund's notice of certification as
68 provided under subsection 4 of section 620.3510, less the number of jobs
69 created and jobs retained reported in all of the rural fund's reports
70 submitted pursuant to this section; and

71 (b) The denominator of which is the number of jobs created and
72 jobs retained included in such rural fund's notice of certification as
73 provided under subsection 4 of section 620.3510. At the time of exit,
74 before making a distribution to the rural fund's equity holders or
75 payment of any fees, the rural fund shall deduct the amount of the
76 penalty from the equity distribution or fee and pay such penalty to the
77 department.

620.3531. Notwithstanding the provisions of section 23.253 of the
2 Missouri sunset act to the contrary:

3 (1) The provisions of the new program authorized under sections
4 620.3500 to 620.3530 shall automatically sunset ten years after the
5 effective date of sections 620.3500 to 620.3530 unless reauthorized by an
6 act of the general assembly;

7 (2) If such program is reauthorized, the program authorized
8 under sections 620.3500 to 620.3530 shall automatically sunset ten years
9 after the effective date of the reauthorization of sections 620.3500 to
10 620.3530; and

11 (3) Sections 620.3500 to 620.3530 shall terminate on September
12 first of the calendar year immediately following the calendar year in
13 which the program authorized under sections 620.3500 to 620.3530 is
14 sunset.