FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 191

95TH GENERAL ASSEMBLY

0837L.05P D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 99.1090, 135.155, 135.680, 135.903, 620.495, 620.1039, 620.1878, and 620.1881, RSMo, and to enact in lieu thereof fourteen new sections relating to job development, with an emergency clause.

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

Section A. Sections 99.1090, 135.155, 135.680, 135.903, 620.495, 620.1039, 620.1878, and 620.1881, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 99.1090, 135.155, 135.552, 135.680, 135.903, 144.058, 348.273, 348.274, 620.495, 620.1039, 620.1878, 620.1881, 620.1892, and 620.1893, to read as follows:

99.1090. 1. A municipality shall submit an application to the department of economic development for review and determination as to approval of the disbursement of the project costs of one or more redevelopment projects from the downtown revitalization preservation fund. The department of economic development shall forward the application to the commissioner of the office of administration for approval. In no event shall any approval authorize a disbursement of one or more redevelopment projects from the downtown revitalization preservation fund which exceeds the allowable amount of other net new revenues derived from the redevelopment area. An application submitted to the department of economic development shall contain the following, in addition to the items set forth in section 99.1086:

(1) An estimate that one hundred percent of the local sales tax increment deposited to the special allocation fund must and will be used to pay redevelopment project costs or obligations issued to finance redevelopment project costs to achieve the objectives of the redevelopment plan**. Contributions to the development project from any private not-for-profit organization or local contributions from tax abatement or other sources may be**

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.

substituted on a dollar-for-dollar basis for the local match of one hundred percent of payments in lieu of taxes and economic activity taxes from the fund;

(2) Identification of the existing businesses located within the redevelopment project area and the redevelopment area;

(3) The aggregate baseline year amount of state sales tax revenues reported by existing businesses within the redevelopment project area. Provisions of section 32.057, RSMo, notwithstanding, municipalities will provide this information to the department of revenue for verification. The department of revenue will verify the information provided by the municipalities within forty-five days of receiving a request for such verification from a municipality;

(4) An estimate of the state sales tax increment within the redevelopment project area after redevelopment. The department of economic development shall have the discretion to exempt smaller projects from this requirement;

(5) An affidavit that is signed by the developer or developers attesting that the provision of subdivision (2) of subsection 2 of section 99.1086 has been met;

(6) The amounts and types of other net new revenues sought by the applicant to be disbursed from the downtown revitalization preservation fund over the term of the redevelopment plan;

(7) The methodologies and underlying assumptions used in determining the estimate of the state sales tax increment; and

(8) Any other information reasonably requested by the department of economic development.

2. The department of economic development shall make all reasonable efforts to process applications within a reasonable amount of time.

3. The department of economic development shall make a determination regarding the application for a certificate allowing disbursements from the downtown revitalization preservation fund and shall forward such determination to the commissioner of the office of administration. In no event shall the amount of disbursements from the downtown revitalization preservation fund approved for a project, in addition to any other state economic redevelopment funding or other state incentives, exceed the projected state benefit of the redevelopment project, as determined by the department of economic development through a cost-benefit analysis. Any political subdivision located either wholly or partially within the redevelopment area shall be permitted to submit information to the department of economic development for consideration in its cost-benefit analysis. Upon approval of downtown revitalization preservation financing, a certificate of approval shall be issued by the department of economic development containing the terms and limitations of the disbursement.

4. At no time shall the annual amount of other net new revenues approved for disbursements from the downtown revitalization preservation fund exceed fifteen million dollars.

5. Redevelopment projects receiving disbursements from the downtown revitalization preservation fund shall be limited to receiving such disbursements for twenty-five years. The approved term notwithstanding, downtown revitalization preservation financing shall terminate when redevelopment financing for a redevelopment project is terminated by a municipality.

6. The municipality shall deposit payments received from the downtown revitalization preservation redevelopment fund in a separate segregated account for other net new revenues within the special allocation fund.

7. Redevelopment project costs may include, at the prerogative of the state, the portion of salaries and expenses of the department of economic development and the department of revenue reasonably allocable to each redevelopment project approved for disbursements from the downtown revitalization preservation fund for the ongoing administrative functions associated with such redevelopment project. Such amounts shall be recovered from new state revenues deposited into the downtown revitalization preservation fund created under section 99.1092.

8. A redevelopment project approved for downtown revitalization preservation financing shall not thereafter elect to receive tax increment financing under the real property tax increment allocation redevelopment act, sections 99.800 to 99.865, and continue to receive downtown revitalization financing under sections 99.1080 to 99.1092.

9. The department of economic development may establish the procedures and standards for the determination and approval of applications by the promulgation of rules and publish forms to implement the provisions of this section and section 99.1092.

10. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section and section 99.1092 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section, section 99.1092, and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

135.155. **1.** Notwithstanding any provision of the law to the contrary, no revenue-producing enterprise **other than headquarters as defined in subsection 10 of section 135.110** shall receive the incentives set forth in sections 135.100 to 135.150 for facilities commencing operations on or after January 1, 2005. **No headquarters shall receive the**

incentives set forth in subsections 9 to 14 of section 135.110 for facilities commencing or expanding operations on or after January 1, 2020.

2. Notwithstanding subsection 9 of section 135.110 to the contrary, expansions at headquarters facilities shall each be considered a separate new business facility and each be entitled to the credits as set forth in subsections 9 to 14 of section 135.110 if the number of new business facility employees attributed to each such expansion is at least twenty-five and the amount of new business facility investment attributed to each such expansion is at least one million dollars. In any year in which a new business facility is not created, the jobs and investment for that year shall be included in calculating the credits for the most recent new business facility and not an earlier created new business facility.

3. Notwithstanding any provision of law to the contrary, for headquarters, buildings on multiple noncontiguous real properties shall be considered one facility if the buildings are located within the same county or within the same municipality.

135.552. 1. As used in this section, the following terms mean:

(1) "Qualifying motor vehicle", any new self-propelled vehicle not operated exclusively upon tracks, except farm tractors, that is assembled and sold in this state on or after January 1, 2009;

(2) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or otherwise due under chapter 147, 148, or 153, RSMo;

(3) "Taxpayer", any individual or entity subject to the tax imposed in chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, or the tax imposed in chapter 147, 148, or 153, RSMo.

2. For all taxable years beginning on or after January 1, 2009, a taxpayer shall be allowed a tax credit for the purchase of a qualifying motor vehicle. The tax credit amount shall be equal to the amount of state sales tax paid on such qualifying motor vehicle. If the amount of the tax credit issued exceeds the amount of the taxpayer's state tax liability for the tax year for which the credit is claimed, the difference shall be refundable. No tax credit granted under this section shall be transferred, sold, or assigned.

3. This section shall not be construed to prohibit the levy of any local sales tax, as defined in section 32.085, RSMo, on any sales of new motor vehicles assembled and sold in the state on or after January 1, 2009. In the event that any political subdivision has enacted a local sales tax on such sales, the political subdivision may, by order or ordinance, exempt such sales from the local sales tax law.

4. The department of revenue may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010,

RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be invalid and void.

5. Under section 23.253, RSMo, of the Missouri Sunset Act:

(1) The provisions of the new program authorized under this section shall automatically sunset on December thirty-first six years after the effective date of this section unless reauthorized by an act of the general assembly; and

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

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

135.680. 1. As used in this section, the following terms shall mean:

(1) "Adjusted purchase price", the product of:

(a) The amount paid to the issuer of a qualified equity investment for such qualified equity investment; and

(b) The following fraction:

a. The numerator shall be the dollar amount of qualified low-income community investments held by the issuer in this state as of the credit allowance date during the applicable tax year; and

b. The denominator shall be the total dollar amount of qualified low-income community investments held by the issuer in all states as of the credit allowance date during the applicable tax year;

c. For purposes of calculating the amount of qualified low-income community investments held by an issuer, an investment shall be considered held by an issuer even if the investment has been sold or repaid; provided that the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment within twelve months of the receipt of such capital. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income

community investment, and the qualified low-income community investment shall be considered held by the issuer through the seventh anniversary of the qualified equity investment's issuance;

(2) "Applicable percentage", zero percent for each of the first two credit allowance dates, seven percent for the third credit allowance date, and eight percent for the next four credit allowance dates;

(3) "Credit allowance date", with respect to any qualified equity investment:

(a) The date on which such investment is initially made; and

(b) Each of the six anniversary dates of such date thereafter;

(4) "Long-term debt security", any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date, and with no distribution, payment, or interest features related to the profitability of the qualified community development entity or the performance of the qualified community development entity's investment portfolio. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the issuer has defaulted on covenants designed to ensure compliance with this section or Section 45D of the Internal Revenue Code of 1986, as amended;

(5) "Qualified active low-income community business", the meaning given such term in Section 45D of the Internal Revenue Code of 1986, as amended; provided that any business that derives or projects to derive fifteen percent or more of its annual revenue from the rental or sale of real estate shall not be considered to be a qualified active low-income community business;

(6) "Qualified community development entity", the meaning given such term in Section 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Treasury Department with respect to credits authorized by Section 45D of the Internal Revenue Code of 1986, as amended, which includes the state of Missouri within the service area set forth in such allocation agreement;

(7) "Qualified equity investment", any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(a) Is acquired after September 4, 2007, at its original issuance solely in exchange for cash;

(b) Has at least eighty-five percent of its cash purchase price used by the issuer to make qualified low-income community investments; and

(c) Is designated by the issuer as a qualified equity investment under this subdivision and is certified by the department of economic development as not exceeding the limitation contained in subsection 2 of this section.

This term shall include any qualified equity investment that does not meet the provisions of paragraph (a) of this subdivision if such investment was a qualified equity investment in the hands of a prior holder;

(8) "Qualified low-income community investment", any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of its affiliates, that may be used from the calculation of any numerator described in subparagraph a. of paragraph (b) of subdivision (1) of this subsection shall be ten million dollars whether issued to one or several qualified community development entities;

(9) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo, excluding withholding tax imposed in sections 143.191 to 143.265, RSMo, or otherwise due under section 375.916, RSMo, or chapter 147, 148, or 153, RSMo;

(10) "Taxpayer", any individual or entity subject to the tax imposed in chapter 143, RSMo, excluding withholding tax imposed in sections 143.191 to 143.265, RSMo, or the tax imposed in section 375.916, RSMo, or chapter 147, 148, or 153, RSMo.

2. A taxpayer that makes a qualified equity investment earns a vested right to tax credits under this section. On each credit allowance date of such qualified equity investment the taxpayer, or subsequent holder of the qualified equity investment, shall be entitled to a tax credit during the taxable year including such credit allowance date. The tax credit amount shall be equal to the applicable percentage of the adjusted purchase price paid to the issuer of such qualified equity investment. The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state tax liability for the tax year for which the tax credit is claimed. No tax credit claimed under this section shall be refundable or transferable. Tax credits earned by a partnership, limited liability company, S-corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders. Any amount of tax credit that the taxpayer is prohibited by this section from claiming in a taxable year may be carried forward to any of the taxpayer's five subsequent taxable years. The department of economic development shall limit the monetary amount of qualified equity investments permitted under this section to a level necessary to limit tax credit utilization at no more than **[**fifteen**] twenty-seven** million **five hundred thousand** dollars of tax credits in any fiscal year. Such limitation on qualified equity investments shall be based on the anticipated

utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

3. The issuer of the qualified equity investment shall certify to the department of economic development the anticipated dollar amount of such investments to be made in this state during the first twelve-month period following the initial credit allowance date. If on the second credit allowance date, the actual dollar amount of such investments is different than the amount estimated, the department of economic development shall adjust the credits arising on the second allowance date to account for such difference.

4. The department of economic development shall recapture the tax credit allowed under this section with respect to such qualified equity investment under this section if:

(1) Any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under Section 45D of the Internal Revenue Code of 1986, as amended; or

(2) The issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of such qualified equity investment.

Any tax credit that is subject to recapture shall be recaptured from the taxpayer that claimed the tax credit on a return.

5. The department of economic development shall promulgate rules to implement the provisions of this section, including recapture provisions on a scaled proportional basis, and to administer the allocation of tax credits issued for qualified equity investments, which shall be conducted on a first-come, first-serve basis. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after September 4, 2007, shall be invalid and void.

6. For fiscal years following fiscal year **[**2010**] 2012**, qualified equity investments shall not be made under this section unless reauthorization is made pursuant to this subsection. For all fiscal years following fiscal year **[**2010**] 2012**, unless the general assembly adopts a concurrent resolution granting authority to the department of economic development to approve qualified equity investments for the Missouri new markets development program and clearly describing the amount of tax credits available for the next fiscal year, or otherwise complies with the provisions of this subsection, no qualified equity investments may be permitted to be made

under this section. The amount of available tax credits contained in such a resolution shall not exceed the limitation provided under subsection 2 of this section. In any year in which the provisions of this section shall sunset pursuant to subsection 7 of this section, reauthorization shall be made by general law and not by concurrent resolution. Nothing in this subsection shall preclude a taxpayer who makes a qualified equity investment prior to the expiration of authority to make qualified equity investments from claiming tax credits relating to such qualified equity investment for each applicable credit allowance date.

7. Under section 23.253, RSMo, of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall automatically sunset six years after September 4, 2007, unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset. However, nothing in this subsection shall preclude a taxpayer who makes a qualified equity investment prior to sunset of this section under the provisions of section 23.253, RSMo, from claiming tax credits relating to such qualified equity investment for each credit allowance date.

135.903. 1. To qualify as a rural empowerment zone, an area shall meet all the following criteria:

(1) The area is one of pervasive poverty, unemployment, and general distress;

(2) At least sixty-five percent of the population has earned income below eighty percent of the median income of all residents within the state according to the last decennial census or other appropriate source as approved by the director;

(3) The population of the area is at least four hundred but not more than three thousand five hundred at the time of designation as a rural empowerment zone;

(4) The level of unemployment of persons, according to the most recent data available from the division of employment security or from the United States Bureau of Census and approved by the director, within the area exceeds one and one-half times the average rate of unemployment for the state of Missouri over the previous twelve months, or the percentage of area residents employed on a full-time basis is less than fifty percent of the statewide percentage of residents employed on a full-time basis;

(5) The area is situated more than ten miles from any existing rural empowerment zone;

(6) The area is situated in **[**a county of the third classification without a township form of government and with more than eight thousand nine hundred twenty-five but less than nine thousand twenty-five**] any county with eighteen thousand or fewer** inhabitants; and

(7) The area is not situated in an existing enterprise zone.

2. The governing body of any county in which an area may be designated a rural empowerment zone shall submit to the department an application showing that the area complies with the requirements of subsection 1 of this section. The department shall declare the area a rural empowerment zone if upon investigation the department finds that the area meets the requirements of subsection 1 of this section. If the area is found not to meet the requirements, the governing body shall have the opportunity to submit another application for designation as a rural empowerment zone and the department shall designate the area a rural empowerment zone if upon investigation the department finds that the area meets the requirements of subsection 1 of this section.

3. There shall be no more than two rural empowerment zones **per county** as created under sections 135.900 to 135.906 in existence at any time.

144.058. In addition to the exemptions granted under this chapter, there shall also be specifically exempted from state and local sales and use taxes defined, levied, or calculated under section 32.085, RSMo, sections 144.010 to 144.525, sections 144.600 to 144.761, or section 238.235, RSMo, all electrical energy, gas whether natural, artificial or propane, water, and other utilities including telecommunication services, and machinery and equipment which is used or consumed by any person, firm, corporation, or partnership operating a business, which after August 28, 2009, relocates such business to a facility located within a portion of an underground mine that is not used for mining and contains at least five hundred thousand square feet of space, provided such business facility is utilized for:

(1) Data processing, hosting, and related services (NAICS 518210); or

(2) Internet publishing and broadcasting and web search portals (NAICS 519130), at the business facility.

Any business which utilizes these exemptions shall not be allowed to simultaneously receive benefits of the quality jobs act under sections 620.1875 to 620.1890, RSMo. "NAICS" shall mean the 2007 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget. Any NAICS sector, subsector, industry group or industry identified in this section shall include its corresponding classification in previous and subsequent federal industry classification systems.

348.273. As used in sections 348.273 and 348.274, the following terms shall mean:

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

(2) "Distressed community", as defined in section 135.530, RSMo;

(3) "Equity investment", money or money equivalent in consideration for qualified securities. An equity investment shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the Internal Revenue Code;

(4) "Investor":

(a) An individual who is an accredited investor, as defined in 17 CFR 230.501(a) as in effect on August 28, 2009; or

(b) Any partnership, corporation, trust, limited liability company, or not-for-profit entity that was established and is operated for the purpose of making preseed and seed stage investments in start-up companies, and is approved by the department;

(5) "Qualified Missouri business", an independently owned and operated business which is headquartered and located in this state and which is in need of venture capital. Such business shall have no more than two hundred employees, eighty percent of which are employed in this state. Such business shall be involved in commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce but excluding retail, real estate, real estate development, insurance, and professional services provided by accountants, lawyers, or physicians. At the time approval is sought, such business shall be a small business concern that meets the requirements of the United States Small Business Administration's qualification size standards for its venture capital program, as defined in the Small Business Investment Act of 1958, as amended, and rules promulgated in 13 CFR 121.301(c), as amended;

(6) "Qualified securities", securities that are not redeemable or repayable within seven years of issuance and that have been approved in form and substance by the department. Forms of such equity securities include:

(a) A general or limited partnership interest;

(b) Common stock;

(c) Preferred stock, with or without voting rights, without regard to seniority position, and whether or not convertible into common stock; or

(d) Convertible debt;

(7) "Rural area", any city, town, or village with fewer than fifteen thousand inhabitants and located in any county that is not part of a standard metropolitan statistical area as defined by the United States Department of Commerce or its successor agency.

However, any such city, town, or village located in any county so defined as a standard metropolitan statistical area may be designated a rural area by the office of rural development if:

(a) A substantial number of persons in such county derive their income from agriculture;

(b) The county has only one city within the county having a population of more than fifteen thousand and is classified as a standard metropolitan statistical area; and

(c) All other cities, towns, and villages in that county have a population of less than fifteen thousand.

348.274. 1. The department may authorize tax credits to encourage equity investment into technology-based early stage Missouri companies.

2. If a qualified Missouri business is approved by the department, the investors who contribute the first five hundred thousand dollars in equity investment in the qualified Missouri business may be issued a tax credit in the year the equity investment is made. The tax credit shall be in a total amount equal to thirty percent of such investors' equity investment in any qualified Missouri business, subject to the limitations set forth in subsection 5 of this section. However, if the qualified Missouri business invested in is located in a rural area or a distressed community, the investors may be issued a tax credit for forty percent of such investment, subject to the limitations set forth in subsection 5 of this section.

3. (1) Before an investor may be entitled to receive tax credits, as authorized by this section, such investor shall have made an equity investment in a qualified security of a qualified Missouri business. This business shall have been approved by the department as a qualified Missouri business prior to the date on which the cash investment was made. To be designated as a qualified Missouri business, a business shall make application to the department in accordance with the provisions of this section. Such application shall be in form and substance as required by the department but shall include at least the following:

(a) The name of the business and certified copies of the organizational documents of the business;

(b) A business plan, including a description of the business and the management, product, market, and financial plan of the business;

(c) A statement of the business innovative and proprietary technology, product, or service;

(d) A statement of the potential economic impact of the enterprise including the number, location, and types of jobs expected to be created;

(e) A description of the qualified securities to be issued, the consideration to be paid for the qualified securities, the amount of any tax credits requested, and the earliest year in which the tax credits may be redeemed;

(f) A statement of the amount, timing, and projected use of the proceeds to be raised from the proposed sale of qualified securities; and

(g) Other information as the department may request, such as the names, addresses, and taxpayer identification numbers of all investors who may qualify for the tax credit. Such list of investors who may qualify for the tax credits shall be amended as new qualified securities are sold or as any information on the list changes.

(2) No business shall be designated as a qualified Missouri business unless such business meets all of the following criteria:

(a) The business shall not have had annual gross revenues of more than three million dollars in the most recent tax year of the business;

(b) The business shall not have ownership interests including, but not limited to, common or preferred shares of stock that can be traded by the public via a stock exchange, electronic exchange, bulletin board, or other public market place on or before the date that a qualifying investment is made;

(c) The business shall not be engaged primarily in any one or more of the following enterprises:

a. The business of banking, savings and loan or lending institutions, credit or finance, or financial brokerage or investments;

b. Professional services, such as legal, accounting or engineering services;

c. Governmental, charitable, religious or trade organizations;

d. The ownership, development, brokerage, sales, or leasing of real estate;

e. Insurance;

f. Construction or construction management or contracting;

g. Business consulting or brokerage;

h. Any business engaged primarily as a passive business, having irregular or noncontinuous operations, or deriving substantially all of the income of the business from passive investments that generate interest, dividends, royalties, or capital gains, or any business arrangements the effect of which is to immunize an investor from risk of loss;

i. Any Missouri certified capital formation company;

j. Any activity that is in violation of the law; and

k. Any business raising money primarily to purchase real estate, land, or fixtures;

(d) The business shall satisfy all other requirements of this section.

(3) The portions of documents and other materials submitted to the department that contain trade secrets shall be kept confidential and shall be maintained in a secured environment by the director of the department. For the purposes of this section, such portions of documents and other materials shall mean any customer list, any formula, compound, production data, or compilation of information certain individuals within a commercial concern using such portions of documents and other material means to fabricate, produce, or compound an article of trade, or, any service having commercial value, which gives the user an opportunity to obtain a business advantage over competitors who do not know or use such service.

(4) A qualified Missouri business shall have the burden of proof to demonstrate to the department the qualifications of the business under this section and shall have the obligation to notify the department in a timely manner of any changes in the qualifications of the business or in the eligibility of investors to claim a tax credit for cash investment in a qualified security.

4. The designation of a business as a qualified Missouri business shall be made by the department, and such designation shall be renewed annually. A business shall be so designated if the department determines, based upon the application submitted by the business and any additional investigation the staff of the department shall make, that the following criteria have been or shall be satisfied:

(1) The business has a reasonable chance of success;

(2) The ability of investors in the business to receive tax credits for cash investments in qualified securities of the business is necessary because funding otherwise available for the business is not available on commercially reasonable terms;

(3) The business has the reasonable potential to create measurable employment within the state;

(4) The business has an innovative and proprietary technology, product, and service;

(5) The existing owners of the business and other founders have made or are committed to make a substantial financial and time commitment to the business;

(6) The securities to be issued and purchased are qualified securities; and

(7) Binding commitments have been made by the business to the department for adequate reporting of financial data, including a requirement for an annual report, or, if required by the department, an annual audit of the financial and operational records of the business, the right of access to the financial records of the business, and the right of the department to record and publish normal and customary data and information related to the issuance of tax credits that are not otherwise determined to be trade or business secrets.

5. The department shall not issue tax credits of more than fifty thousand dollars to an investor per investment into a single, qualified Missouri company, or for tax credits totaling more than one hundred thousand dollars in a single year per investor. The total amount of tax credits that may be allowed under this section shall not exceed five million dollars per tax year.

6. This tax credit may be used in its entirety in the taxable year in which the equity investment is made or the credit may be carried forward for use in any of the next three consecutive tax years until the total amount of the credit is used. The tax credits may be sold, assigned, exchanged, or otherwise transferred.

7. Tax credits may be used against the tax otherwise due under chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo.

8. A qualified Missouri business for which credits have been issued that, within seven years of receiving tax credits under this section relocates its headquarters out of Missouri, ceases to employ eighty percent of its employees in Missouri, alters the principal nature of its operations, or divests itself of key assets shall upon demand by the department pay the state of Missouri an amount equal to the amount of credits issued to its contributors.

9. The reasonable costs of the administration of this section, the review of applications for certification as qualified Missouri businesses, and the issuance of tax credits authorized by this section shall be reimbursed through fees paid by the qualified Missouri businesses and the investors or the transferees of investors, according to a reasonable fee schedule adopted by the department.

10. In addition to reports by the businesses to the department, the department shall also provide in its annual report information on the marketing and use of the investor tax credits. This report shall include the following:

(1) The amount of tax credits used in the previous fiscal year including what percentage was claimed by individuals and what percentage was claimed by firms and other entities;

(2) The types of businesses that benefited from the tax credits; and

(3) Any aggregate job creation or capital investment in Missouri that resulted from the use of the tax credits for a period of five years beginning from the date on which the tax credits were awarded.

In addition, the annual report shall provide information regarding what businesses deriving a benefit from the tax credits remained in Missouri, what businesses ceased doing

business, what businesses were purchased, and what businesses may have moved out-of-state and the reason for such move.

620.495. 1. This section shall be known as the "Small Business Incubators Act".

2. As used in this section, unless the context clearly indicates otherwise, the following words and phrases shall mean:

(1) "Department", the department of economic development;

(2) "Incubator", a program in which small units of space may be leased by a tenant and in which management maintains or provides access to business development services for use by tenants or a program without infrastructure in which participants avail themselves of business development services to assist in the growth of their start-up small businesses;

(3) "Local sponsor" or "sponsor", an organization which enters into a written agreement with the department to establish, operate and administer a small business incubator program or to provide funding to an organization which operates such a program;

(4) "Participant", a sole proprietorship, business partnership or corporation operating a business for profit through which the owner avails himself or herself of business development services in an incubator program;

(5) "Tenant", a sole proprietorship, business partnership or corporation operating a business for profit and leasing or otherwise occupying space in an incubator.

3. There is hereby established under the direction of the department a loan, loan guarantee and grant program for the establishment, operation and administration of small business incubators, to be known as the "Small Business Incubator Program". A local sponsor may submit an application to the department to obtain a loan, loan guarantee or grant to establish an incubator. Each application shall:

(1) Demonstrate that a program exists that can be transformed into an incubator at a specified cost;

(2) Demonstrate the ability to directly provide or arrange for the provision of business development services for tenants and participants of the incubator. These services shall include, but need not be limited to, financial consulting assistance, management and marketing assistance, business education, and physical services;

(3) Demonstrate a potential for sustained use of the incubator program by eligible tenants and participants, through a market study or other means;

(4) Demonstrate the ability to manage and operate the incubator program;

(5) Include such other information as the department may require through its guidelines.

4. The department shall review and accept applications based on the following criteria:

(1) Ability of the local sponsor to carry out the provisions of this section;

(2) Economic impact of the incubator on the community;

(3) Conformance with areawide and local economic development plans, if such exist;

(4) Location of the incubator, in order to encourage geographic distribution of incubators across the state.

5. Loans, loan guarantees and grants shall be administered in the following manner:

(1) Loans awarded or guaranteed and grants awarded shall be used only for the acquisition and leasing of land and existing buildings, the rehabilitation of buildings or other facilities, construction of new facilities, the purchase of equipment and furnishings which are necessary for the creation and operation of the incubator, and business development services including, but not limited to, business management advising and business education;

(2) Loans, loan guarantees and grants may not exceed fifty percent of total eligible project costs;

(3) Payment of interest and principal on loans may be deferred at the discretion of the department.

6. A local sponsor, or the organization receiving assistance through the local sponsor, shall have the following responsibilities and duties in establishing and operating an incubator with assistance from the small business incubator program:

(1) Secure title on a facility for the program or a lease of a facility for the program;

(2) Manage the physical development of the incubator program, including the provision of common conference or meeting space;

(3) Furnish and equip the program to provide business services to the tenants and participants;

(4) Market the program and secure eligible tenants and participants;

(5) Provide financial consulting, marketing and management assistance services or arrange for the provision of these services for tenants and participants of the incubator, including assistance in accessing private financial markets;

(6) Set rental and service fees;

(7) Encourage the sharing of ideas between tenants and participants and otherwise aid the tenants and participants in an innovative manner while they are within the incubator;

(8) Establish policies and criteria for the acceptance of tenants and participants into the incubator and for the termination of occupancy of tenants so as to maximize the opportunity to succeed for the greatest number of tenants, consistent with those specified in this section.

7. The department:

(1) May adopt such rules, statements of policy, procedures, forms and guidelines as may be necessary for the implementation of this section;

(2) May make loans, loan guarantees and grants to local sponsors for incubators;

(3) Shall ensure that local sponsors receiving loans, loan guarantees or grants meet the conditions of this section;

(4) Shall receive and evaluate annual reports from local sponsors. Such annual reports shall include, but need not be limited to, a financial statement for the incubator, evidence that all tenants and participants in the program are eligible under the terms of this section, and a list of companies in the incubator.

8. The department of economic development is also hereby authorized to review any previous loans made under this program and, where appropriate in the department's judgment, convert such loans to grant status.

9. On or before January first of each year, the department shall provide a report to the governor, the chief clerk of the house of representatives and the secretary of the senate which shall include, but need not be limited to:

(1) The number of applications for incubators submitted to the department;

(2) The number of applications for incubators approved by the department;

(3) The number of incubators created through the small business incubator program;

(4) The number of tenants and participants engaged in each incubator;

(5) The number of jobs provided by each incubator and tenants and participant of each incubator;

(6) The occupancy rate of each incubator;

(7) The number of firms still operating in the state after leaving incubators and the number of jobs they have provided.

10. There is hereby established in the state treasury a special fund to be known as the "Missouri Small Business Incubators Fund", which shall consist of all moneys which may be appropriated to it by the general assembly, and also any gifts, contributions, grants or bequests received from federal, private or other sources. Moneys for loans, loan guarantees and grants under the small business incubator program may be obtained from appropriations made by the general assembly from the Missouri small business incubators fund. Any moneys remaining in the Missouri small business incubators fund at the end of any fiscal year shall not lapse to the general revenue fund, as provided in section 33.080, RSMo, but shall remain in the Missouri small business incubators fund.

11. For any taxable year beginning after December 31, 1989, a taxpayer, including any charitable organization which is exempt from federal income tax and whose Missouri unrelated business taxable income, if any, would be subject to the state income tax imposed under chapter 143, RSMo, shall be entitled to a tax credit against any tax otherwise due under the provisions of chapter 143, RSMo, or chapter 147, RSMo, or chapter 148, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo, in the amount of fifty percent of any amount

contributed by the taxpayer to the Missouri small business incubators fund during the taxpayer's tax year or any contribution by the taxpayer to a local sponsor after the local sponsor's application has been accepted and approved by the department. The tax credit allowed by this subsection shall be claimed by the taxpayer at the time he files his return and shall be applied against the income tax liability imposed by chapter 143, RSMo, or chapter 147, RSMo, or chapter 148, RSMo, after all other credits provided by law have been applied. That portion of earned tax credits which exceeds the taxpayer's tax liability may be carried forward for up to five years. The aggregate of all tax credits authorized under this section shall not exceed **[**five hundred thousand**] one million** dollars in any taxable year.

12. Notwithstanding any provision of Missouri law to the contrary, any taxpayer may sell, assign, exchange, convey or otherwise transfer tax credits allowed in subsection 11 of this section under the terms and conditions prescribed in subdivisions (1) and (2) of this subsection. Such taxpayer, hereinafter the assignor for the purpose of this subsection, may sell, assign, exchange or otherwise transfer earned tax credits:

(1) For no less than seventy-five percent of the par value of such credits; and

(2) In an amount not to exceed one hundred percent of annual earned credits.

The taxpayer acquiring earned credits, hereinafter the assignee for the purpose of this subsection, may use the acquired credits to offset up to one hundred percent of the tax liabilities otherwise imposed by chapter 143, RSMo, or chapter 147, RSMo, or chapter 148, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo. Unused credits in the hands of the assignee may be carried forward for up to five years. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the department of economic development in writing within thirty calendar days following the effective day of the transfer and shall provide any information as may be required by the department of economic development to administer and carry out the provisions of this section. The director of the department of economic development shall prescribe the method for submitting applications for claiming the tax credit allowed under subsection 11 of this section and shall, if the application is approved, certify to the director of revenue that the taxpayer claiming the credit has satisfied all the requirements specified in this section and is eligible to claim the credit.

620.1039. 1. As used in this section, the term "taxpayer" means an individual, a partnership, or any charitable organization which is exempt from federal income tax and whose Missouri unrelated business taxable income, if any, would be subject to the state income tax imposed under chapter 143, RSMo, or a corporation as described in section 143.441 or 143.471, RSMo, or section 148.370, RSMo, and the term "qualified research expenses" has the same

meaning as prescribed in 26 U.S.C. 41**, except that such qualified research expenses shall be limited to those incurred in the research and development of agricultural biotechnology, plant genomics products, diagnostic and therapeutic medical devices, prescription pharmaceuticals consumed by humans or animals, or qualified research expenses incurred in the research, development or manufacture of power system technology for aerospace, space, defense, or implantable or wearable medical devices**.

2. For tax years beginning on or after January 1, 2001, the director of the department of economic development **[**may**] shall** authorize a taxpayer to receive a tax credit against the tax otherwise due pursuant to chapter 143, RSMo, or chapter 148, RSMo, other than the taxes withheld pursuant to sections 143.191 to 143.265, RSMo, in an amount up to six and one-half percent of the excess of the taxpayer's qualified research expenses, as certified by the director of the department of economic development, within this state during the taxable year over the average of the taxpayer's qualified research expenses within this state over the immediately preceding three taxable years; except that, no tax credit shall be allowed on that portion of the taxpayer's qualified research expenses incurred within this state during the taxable year in which the credit is being claimed, to the extent such expenses exceed two hundred percent of the taxpayer's average qualified research expenses incurred during the immediately preceding three taxable years.

3. The director of economic development shall prescribe the manner in which the tax credit may be applied for. The tax credit authorized by this section may be claimed by the taxpayer to offset the tax liability imposed by chapter 143, RSMo, or chapter 148, RSMo, that becomes due in the tax year during which such qualified research expenses were incurred. Where the amount of the credit exceeds the tax liability, the difference between the credit and the tax liability may only be carried forward for the next five succeeding taxable years or until the full credit has been claimed, whichever first occurs. The application for tax credits authorized by the director pursuant to subsection 2 of this section shall be made **no earlier than January first and** no later than **[**the end of**] July first of the calendar year immediately following the calendar year in which** the taxpayer's tax period **[**immediately following the tax period**]** for which the credits are being claimed **ended. The director shall act on any such application for tax credits no sooner than August first but no later than August fifteenth of each year for applications filed in that calendar year**.

4. Certificates of tax credit issued pursuant to this section may be transferred, sold or assigned by filing a notarized endorsement thereof with the department which names the transferee and the amount of tax credit transferred. The director of economic development may allow a taxpayer to transfer, sell or assign up to forty percent of the amount of the certificates of tax credit issued to and not claimed by such taxpayer pursuant to this section during any tax year

commencing on or after January 1, **[**1996**] 2010**, and ending not later than December 31, **[**1999**] 2016**. Such taxpayer shall file, by December 31, **[**2001**] 2018**, an application with the department which names the transferee, the amount of tax credit desired to be transferred, and a certification that the funds received by the applicant as a result of the transfer, sale or assignment of the tax credit shall be expended within three years at the state university for the sole purpose of conducting research activities agreed upon by the department, the taxpayer and the state university. Failure to expend such funds in the manner prescribed pursuant to this section shall cause the applicant to be subject to the provisions of section 620.017.

5. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. All rulemaking authority delegated prior to June 27, 1997, is of no force and effect and repealed; however, nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to June 27, 1997, if such rule complied with the provisions of chapter 536, RSMo. The provisions of this section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, including the ability to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule, are subsequently held unconstitutional, then the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void.

6. The aggregate of all tax credits authorized pursuant to this section shall not exceed **[**nine**] ten** million **[**seven hundred thousand**]** dollars in any **calendar** year. **In the event that total eligible claims for credits received in a calendar year exceed the annual cap, each eligible claimant shall be issued credits based upon the following formula: the eligible credits if the annual cap had not been exceeded multiplied by the ratio of the annual cap divided by the total of all eligible claims for credits filed in that calendar year.**

7. **[**For all tax years beginning on or after January 1, 2005, no tax credits shall be approved, awarded, or issued to any person or entity claiming any tax credit under this section**] No one taxpayer shall be issued more than thirty percent of the aggregate of all tax credits authorized under this section in any calendar year**.

620.1878. For the purposes of sections 620.1875 to 620.1890, the following terms shall mean:

(1) "Approval", a document submitted by the department to the qualified company that states the benefits that may be provided by this program;

(2) "Average wage", the new payroll divided by the number of new jobs;

(3) "Commencement of operations", the starting date for the qualified company's first new employee, which must be no later than twelve months from the date of the approval;

(4) "County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility. The department shall publish the county average wage for each county at least annually. Notwithstanding the provisions of this subdivision to the contrary, for any qualified company that in conjunction with their project is relocating employees from a Missouri county with a higher county average wage, the company shall obtain the endorsement of the governing body of the community from which jobs are being relocated or the county average wage for their project shall be the county average wage for the county from which the employees are being relocated;

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

(6) "Director", the director of the department of economic development;

(7) "Employee", a person employed by a qualified company;

(8) "Full-time employee", an employee of the qualified company that is scheduled to work an average of at least thirty-five hours per week for a twelve-month period, and one for which the qualified company offers health insurance and pays at least fifty percent of such insurance premiums;

(9) "High-impact project", a qualified company that, within two years from commencement of operations, creates one hundred or more new jobs;

(10) "Local incentives", the present value of the dollar amount of direct benefit received by a qualified company for a project facility from one or more local political subdivisions, but shall not include loans or other funds provided to the qualified company that must be repaid by the qualified company to the political subdivision;

(11) "NAICS", the 1997 edition of the North American Industry Classification System as prepared by the Executive Office of the President, Office of Management and Budget. Any NAICS sector, subsector, industry group or industry identified in this section shall include its corresponding classification in subsequent federal industry classification systems;

(12) "New direct local revenue", the present value of the dollar amount of direct net new tax revenues of the local political subdivisions likely to be produced by the project over a ten-year period as calculated by the department, excluding local earnings tax, and net new utility revenues, provided the local incentives include a discount or other direct incentives from utilities owned or operated by the political subdivision;

(13) "New investment", the purchase or leasing of new tangible assets to be placed in operation at the project facility, which will be directly related to the new jobs;

(14) "New job", the number of full-time employees located at the project facility that exceeds the project facility base employment less any decrease in the number of full-time employees at related facilities below the related facility base employment. No job that was created prior to the date of the notice of intent shall be deemed a new job. An employee that spends less than fifty percent of the employee's work time at the facility is still considered to be located at a facility if the employee receives his or her directions and control from that facility, is on the facility's payroll, one hundred percent of the employee's income from such employment is Missouri income, and the employee is paid at or above the state average wage;

(15) "New payroll", the amount of taxable wages of full-time employees, excluding owners, located at the project facility that exceeds the project facility base payroll. If full-time employment at related facilities is below the related facility base employment, any decrease in payroll for full-time employees at the related facilities below that related facility base payroll shall also be subtracted to determine new payroll;

(16) "Notice of intent", a form developed by the department, completed by the qualified company and submitted to the department which states the qualified company's intent to hire new jobs and request benefits under this program;

(17) "Percent of local incentives", the amount of local incentives divided by the amount of new direct local revenue;

(18) "Program", the Missouri quality jobs program provided in sections 620.1875 to 620.1890;

(19) "Project facility", the building used by a qualified company at which the new jobs and new investment will be located. A project facility may include separate buildings that are located within one mile of each other or within the same county such that their purpose and operations are interrelated;

(20) "Project facility base employment", the greater of the number of full-time employees located at the project facility on the date of the notice of intent or for the twelve-month period prior to the date of the notice of intent, the average number of full-time employees located at the project facility. In the event the project facility has not been in operation for a full twelve-month period, the average number of full-time employees for the number of months the project facility has been in operation prior to the date of the notice of intent;

(21) "Project facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at the project facility in the twelve months prior to the notice of intent, not including the payroll of the owners of the qualified company unless the qualified company is participating in an employee stock ownership

plan. For purposes of calculating the benefits under this program, the amount of base payroll shall increase each year based on an appropriate measure, as determined by the department;

(22) "Project period", the time period that the benefits are provided to a qualified company;

(23) "Qualified company", a firm, partnership, joint venture, association, private or public corporation whether organized for profit or not, or headquarters of such entity registered to do business in Missouri that is the owner or operator of a project facility, offers health insurance to all full-time employees of all facilities located in this state, and pays at least fifty percent of such insurance premiums. For the purposes of sections 620.1875 to 620.1890, the term "qualified company" shall not include:

(a) Gambling establishments (NAICS industry group 7132);

(b) Retail trade establishments (NAICS sectors 44 and 45);

(c) Food and drinking places (NAICS subsector 722);

(d) Public utilities (NAICS 221 including water and sewer services);

(e) Any company that is delinquent in the payment of any nonprotested taxes or any other amounts due the state or federal government or any other political subdivision of this state;

(f) Any company that has filed for or has publicly announced its intention to file for bankruptcy protection;

(g) Educational services (NAICS sector 61);

(h) Religious organizations (NAICS industry group 8131);

(i) Public administration (NAICS sector 92);

(j) Ethanol distillation or production; or

(k) Biodiesel production. Notwithstanding any provision of this section to the contrary, the headquarters or administrative offices of an otherwise excluded business may qualify for benefits if the offices serve a multistate territory. In the event a national, state, or regional headquarters operation is not the predominant activity of a project facility, the new jobs and investment of such headquarters operation is considered eligible for benefits under this section if the other requirements are satisfied;

(24) "Qualified renewable energy sources" shall not be construed to include ethanol distillation or production or biodiesel production; however, it shall include:

(a) Open-looped biomass;

(b) Close-looped biomass;

(c) Solar;

(d) Wind;

(e) Geothermal; and

(f) Hydropower;

(25) "Related company" means:

(a) A corporation, partnership, trust, or association controlled by the qualified company;

(b) An individual, corporation, partnership, trust, or association in control of the qualified company; or

(c) Corporations, partnerships, trusts or associations controlled by an individual, corporation, partnership, trust or association in control of the qualified company. As used in this subdivision, "control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote, "control of a partnership or association" shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association, "control of a trust" shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust, and ownership shall be determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

(26) "Related facility", a facility operated by the qualified company or a related company located in this state that is directly related to the operations of the project facility;

(27) "Related facility base employment", the greater of the number of full-time employees located at all related facilities on the date of the notice of intent or for the twelve-month period prior to the date of the notice of intent, the average number of full-time employees located at all related facilities of the qualified company or a related company located in this state;

(28) "Related facility base payroll", the total amount of taxable wages paid by the qualified company to full-time employees of the qualified company located at a related facility in the twelve months prior to the filing of the notice of intent, not including the payroll of the owners of the qualified company unless the qualified company is participating in an employee stock ownership plan. For purposes of calculating the benefits under this program, the amount of related facility base payroll shall increase each year based on an appropriate measure, as determined by the department;

(29) "Rural area", a county in Missouri with a population less than seventy-five thousand or that does not contain an individual city with a population greater than fifty thousand according to the most recent federal decennial census;

(30) "Small and expanding business project", a qualified company that within two years of the date of the approval creates a minimum of twenty new jobs if the project facility is located in a rural area or a minimum of forty new jobs if the project facility is not located in a rural area and creates fewer than one hundred new jobs regardless of the location of the project facility;

(31) "Tax credits", tax credits issued by the department to offset the state income taxes imposed by chapters 143 and 148, RSMo, or which may be sold or refunded as provided for in this program;

(32) "Technology business project", a qualified company that within two years of the date of the approval creates a minimum of ten new jobs involved in the operations of a company:

(a) Which is a technology company, as determined by a regulation promulgated by the department under the provisions of section 620.1884 or classified by NAICS codes;

(b) Which owns or leases a facility which produces electricity derived from qualified renewable energy sources, or produces fuel for the generation of electricity from qualified renewable energy sources, but does not include any company that has received the alcohol mixture credit, alcohol credit, or small ethanol producer credit pursuant to 26 U.S.C. Section 40 of the tax code in the previous tax year; **[**or**]**

(c) Which researches, develops, or manufactures power system technology for: aerospace; space; defense; hybrid vehicles; or implantable or wearable medical devices; **or**

(d) Which is a clinical molecular diagnostic laboratory focused on detecting and monitoring infections in immunocompromised patient populations;

(33) "Withholding tax", the state tax imposed by sections 143.191 to 143.265, RSMo. For purposes of this program, the withholding tax shall be computed using a schedule as determined by the department based on average wages.

620.1881. 1. The department of economic development shall respond within thirty days to a company who provides a notice of intent with either an approval or a rejection of the notice of intent. The department shall give preference to qualified companies and projects targeted at an area of the state which has recently been classified as a disaster area by the federal government. Failure to respond on behalf of the department of economic development shall result in the notice of intent being deemed **[**an approval**] a disapproval** for the purposes of this section. A qualified company who is provided an approval for a project shall be allowed a benefit as provided in this program in the amount and duration provided in this section. A qualified company may receive additional periods for subsequent new jobs **[**at the same facility after the full initial period**] in the same county** if the minimum thresholds are met as set forth in sections 620.1875 to 620.1890. There is no limit on the number **of approvals or** of periods a qualified company may participate in the program, as long as the minimum thresholds are achieved and the qualified company provides the department with the required reporting and is in proper compliance for this program or other state programs. A qualified company may elect to file a notice of intent to start a new project period concurrent with an existing project period if the minimum thresholds are achieved and the qualified company provides the department with the required reporting and is in proper compliance for this program and other state programs;

however, **[**the qualified company may not receive any further benefit under the original approval for jobs created after the date of the new notice of intent, and**]** any jobs created before the new notice of intent may not be included as new jobs for the purpose of benefit calculation in relation to the new approval. **Notwithstanding anything contained herein to the contrary, when a company has filed and received approval of a notice of intent and then subsequently files another notice of intent, the department shall apply the definition of project facility under the current version of subdivision (19) of section 620.1878 on a consistent basis to the new notice of intent as well as all previously filed and approved notices of intent and shall determine the application of the definitions of new job, new payroll, project facility base employment, and project facility base payroll accordingly.**

2. Notwithstanding any provision of law to the contrary, any qualified company that is awarded benefits under this program may not simultaneously receive tax credits or exemptions under sections 135.100 to 135.150, sections 135.200 to 135.286, section 135.535, or sections 135.900 to 135.906, RSMo, at the same project facility. The benefits available to the company under any other state programs for which the company is eligible and which utilize withholding tax from the new jobs of the company must first be credited to the other state program before the withholding retention level applicable under the Missouri quality jobs act will begin to accrue. These other state programs include, but are not limited to, the new jobs training program under sections 178.892 to 178.896, RSMo, the job retention program under sections 178.760 to 178.764, RSMo, the real property tax increment allocation redevelopment act, sections 99.800 to 99.865, RSMo, or the Missouri downtown and rural economic stimulus act under sections 99.915 to 99.980, RSMo. If any qualified company also participates in the new jobs training program in sections 178.892 to 178.896, RSMo, the company shall retain no withholding tax, but the department shall issue a refundable tax credit for the full amount of benefit allowed under this subdivision. The calendar year annual maximum amount of tax credits which may be issued to a qualifying company that also participates in the new job training program shall be increased by an amount equivalent to the withholding tax retained by that company under the new jobs training program. However, if the combined benefits of the quality jobs program and the new jobs training program exceed the projected state benefit of the project, as determined by the department of economic development through a cost-benefit analysis, the increase in the maximum tax credits shall be limited to the amount that would not cause the combined benefits to exceed the projected state benefit. Any taxpayer who is awarded benefits under this program who knowingly hires individuals who are not allowed to work legally in the United States shall immediately forfeit such benefits and shall repay the state an amount equal to any state tax credits already redeemed and any withholding taxes already retained.

3. The types of projects and the amount of benefits to be provided are:

(1) Small and expanding business projects: in exchange for the consideration provided by the new tax revenues and other economic stimuli that will be generated by the new jobs created by the program, a qualified company may retain an amount equal to the withholding tax as calculated under subdivision (33) of section 620.1878 from the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, for a period of three years from the date the required number of new jobs were created if the average wage of the new payroll equals or exceeds the county average wage or for a period of five years from the date the required number of new jobs were created if the average wage of the new payroll equals or exceeds one hundred twenty percent of the county average wage;

(2) Technology business projects: in exchange for the consideration provided by the new tax revenues and other economic stimuli that will be generated by the new jobs created by the program, a qualified company may retain an amount equal to a maximum of five percent of new payroll for a period of five years from the date the required number of jobs were created from the withholding tax of the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, if the average wage of the new payroll equals or exceeds the county average wage. An additional one-half percent of new payroll may be added to the five percent maximum if the average wage of the new payroll in any year exceeds one hundred twenty percent of the county average wage in the county in which the project facility is located, plus an additional one-half percent of new payroll may be added if the average wage of the new payroll in any year exceeds one hundred forty percent of the average wage in the county in which the project facility is located. The department shall issue a refundable tax credit for any difference between the amount of benefit allowed under this subdivision and the amount of withholding tax retained by the company, in the event the withholding tax is not sufficient to provide the entire amount of benefit due to the qualified company under this subdivision**[**. The calendar year annual maximum amount of tax credits that may be issued to any qualified company for a project or combination of projects is five hundred thousand dollars**]**;

(3) High impact projects: in exchange for the consideration provided by the new tax revenues and other economic stimuli that will be generated by the new jobs created by the program, a qualified company may retain an amount from the withholding tax of the new jobs that would otherwise be withheld and remitted by the qualified company under the provisions of sections 143.191 to 143.265, RSMo, equal to three percent of new payroll for a period of five years from the date the required number of jobs were created if the average wage of the new payroll equals or exceeds the county average wage of the county in which the project facility is located. The percentage of payroll allowed under this subdivision shall be three and one-half

percent of new payroll if the average wage of the new payroll in any year exceeds one hundred twenty percent of the county average wage in the county in which the project facility is located. The percentage of payroll allowed under this subdivision shall be four percent of new payroll if the average wage of the new payroll in any year exceeds one hundred forty percent of the county average wage in the county in which the project facility is located. An additional one percent of new payroll may be added to these percentages if local incentives equal between ten percent and twenty-four percent of the new direct local revenue; an additional two percent of new payroll is added to these percentages if the local incentives equal between twenty-five percent and forty-nine percent of the new direct local revenue; or an additional three percent of payroll is added to these percentages if the local incentives equal fifty percent or more of the new direct local revenue. The department shall issue a refundable tax credit for any difference between the amount of benefit allowed under this subdivision and the amount of withholding tax retained by the company, in the event the withholding tax is not sufficient to provide the entire amount of benefit due to the qualified company under this subdivision**[**. The calendar year annual maximum amount of tax credits that may be issued to any qualified company for a project or combination of projects is seven hundred fifty thousand dollars. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a project or combination of projects may be increased up to one million dollars if the number of new jobs will exceed five hundred and if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting the increased limit on behalf of the project**]**;

(4) Job retention projects: a qualified company may receive a tax credit for the retention of jobs in this state, provided **[**the qualified company and the project meets all of the following conditions:

(a)**]** for each of the twenty-four months preceding the year in which application for the program is made the qualified company must have maintained **the lesser of one percent of the average number of total employees in the county in which the project is located during the previous twelve months or seven hundred fifty [**at least one thousand**]** full-time employees at the employer's site **[**in the state**]** at which the jobs are based, **the company agrees to maintain at least the number of full-time employees at the time of application during the period for which benefits are received,** and the average wage of such employees must meet or exceed the county average wage**[**;**]** **and the project meets one of the following conditions:**

[(b) The qualified company retained at the project facility the level of full-time employees that existed in the taxable year immediately preceding the year in which application for the program is made;

(c)**] (a)** The qualified company is considered to have a significant statewide effect on the economy, and has been determined to represent a substantial risk of relocation from the state by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development; **or**

[(d)**] (b)** The qualified company in the project facility will cause to be invested a minimum of seventy million dollars in new investment prior to the end of two years or will cause to be invested a minimum of thirty million dollars in new investment prior to the end of two years and maintain an annual payroll of at least seventy million dollars during each of the years for which a credit is claimed**[**;**]** and

[(e)**]** the local taxing entities shall provide local incentives of at least fifty percent of the new direct local revenues created by the project over a ten-year period. The quality jobs advisory task force may recommend to the department of economic development that appropriate penalties be applied to the company for violating the agreement. The amount of the job retention credit granted may be equal to up to fifty percent of the amount of withholding tax generated by the full-time jobs at the project facility for a period of five years. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a job retention project or combination of job retention projects shall be seven hundred fifty thousand dollars per year, but the maximum amount may be increased up to one million dollars if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887; provided, however, until such time as the initial at-large members of the quality jobs advisory task force are appointed, this determination shall be made by the director of the department of economic development. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting the increased limit on behalf of the job retention project. In no event shall the total amount of all tax credits issued for the entire job retention program under this subdivision exceed **[**three**] thirty** million dollars annually. Notwithstanding the above, no tax credits shall be issued for job retention projects approved by the department after August 30, **[**2013**] 2015**;

(5) Small business job retention and flood survivor relief: a qualified company may receive a tax credit under sections 620.1875 to 620.1890 for the retention of jobs and flood survivor relief in this state for each job retained over a three-year period, provided that:

(a) The qualified company did not receive any state or federal benefits, incentives, or tax relief or abatement in locating its facility in a flood plain;

(b) The qualified company and related companies have fewer than one hundred employees at the time application for the program is made;

(c) The average wage of the qualified company's and related companies' employees must meet or exceed the county average wage;

(d) All of the qualified company's and related companies' facilities are located in this state;

(e) The facilities at the primary business site in this state have been directly damaged by floodwater rising above the level of a five hundred year flood at least two years, but fewer than eight years, prior to the time application is made;

(f) The qualified company made significant efforts to protect the facilities prior to any impending danger from rising floodwaters;

(g) For each year it receives tax credits under sections 620.1875 to 620.1890, the qualified company and related companies retained, at the company's facilities in this state, at least the level of full-time, year-round employees that existed in the taxable year immediately preceding the year in which application for the program is made; and

(h) In the years it receives tax credits under sections 620.1875 to 620.1890, the company cumulatively invests at least two million dollars in capital improvements in facilities and equipment located at such facilities that are not located within a five hundred year flood plain as designated by the Federal Emergency Management Agency, and amended from time to time. The amount of the small business job retention and flood survivor relief credit granted may be equal to up to one hundred percent of the amount of withholding tax generated by the full-time jobs at the project facility for a period of three years. The calendar year annual maximum amount of tax credit that may be issued to any qualified company for a small business job retention and survivor relief project shall be two hundred fifty thousand dollars per year, but the maximum amount may be increased up to five hundred thousand dollars if such action is proposed by the department and approved by the quality jobs advisory task force established in section 620.1887. In considering such a request, the task force shall rely on economic modeling and other information supplied by the department when requesting an increase in the limit on behalf of the small business job retention and flood survivor relief project. In no event shall the total amount of all tax credits issued for the entire small business job retention and flood survivor relief program under this subdivision exceed five hundred thousand dollars annually. Notwithstanding the provisions of this subdivision to the contrary, no tax credits shall be issued for small business job retention and flood survivor relief projects approved by the department after August 30, 2010.

4. The qualified company shall provide an annual report of the number of jobs and such other information as may be required by the department to document the basis for the benefits

of this program. The department may withhold the approval of any benefits until it is satisfied that proper documentation has been provided, and shall reduce the benefits to reflect any reduction in full-time employees or new payroll. Upon approval by the department, the qualified company may begin the retention of the withholding taxes when it reaches the minimum number of new jobs and the average wage exceeds the county average wage. Tax credits, if any, may be issued upon satisfaction by the department that the qualified company has exceeded the county average wage and the minimum number of new jobs. In such annual report, if the average wage is below the county average wage, the qualified company has not maintained the employee insurance as required, or if the number of new jobs is below the minimum, the qualified company shall not receive tax credits or retain the withholding tax for the balance of the benefit period. In the case of a qualified company that initially filed a notice of intent and received an approval from the department for high impact benefits and the minimum number of new jobs in an annual report is below the minimum for high impact projects, the company shall not receive tax credits for the balance of the benefit period but may continue to retain the withholding taxes if it otherwise meets the requirements of a small and expanding business under this program.

5. **[**The maximum calendar year annual tax credits issued for the entire program shall not exceed sixty million dollars.**]** Notwithstanding any provision of law to the contrary, the maximum annual tax credits authorized under section 135.535, RSMo, are hereby reduced from ten million dollars to eight million dollars, with the balance of two million dollars transferred to this program. There shall be no limit on the amount of withholding taxes that may be retained by approved companies under this program.

6. The department shall allocate the annual tax credits based on the date of the approval, reserving such tax credits based on the department's best estimate of new jobs and new payroll of the project, and the other factors in the determination of benefits of this program. However, the annual issuance of tax credits is subject to the annual verification of the actual new payroll. The allocation of tax credits for the period assigned to a project shall expire if, within two years from the date of commencement of operations, or approval if applicable, the minimum thresholds have not been achieved. The qualified company may retain authorized amounts from the withholding tax under this section once the minimum new jobs thresholds are met for the duration of the project period. No benefits shall be provided under this program until the qualified company meets the minimum new jobs thresholds. In the event the qualified company does not meet the minimum new job threshold, the qualified company may submit a new notice of intent or the department may provide a new approval for a new project of the qualified company at the project facility or other facilities.

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

8. Tax credits may be claimed against taxes otherwise imposed by chapters 143 and 148, RSMo, and may not be carried forward but shall be claimed within one year of the close of the taxable year for which they were issued, except as provided under subdivision (4) of subsection 3 of this section.

9. Tax credits authorized by this section may be transferred, sold, or assigned by filing a notarized endorsement thereof with the department that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the department.

10. Prior to the issuance of tax credits, the department shall verify through the department of revenue, or any other state department, that the tax credit applicant does not owe any delinquent income, sales, or use tax or interest or penalties on such taxes, or any delinquent fees or assessments levied by any state department and through the department of insurance, financial institutions and professional registration that the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that at issuance credits shall be first applied to the delinquency and any amount issued shall be reduced by the applicant's tax delinquency. If the department of revenue or the department of insurance, financial institutions and professional registration, or any other state department, concludes that a taxpayer is delinquent after June fifteenth but before July first of any year and the application of tax credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer shall be granted thirty days to satisfy the deficiency in which interest, penalties, and additions to tax shall be tolled. After applying all available credits toward a tax delinquency, the administering agency shall notify the appropriate department and that department shall update the amount of outstanding delinquent tax owed by the applicant. If any credits remain after satisfying all insurance, income, sales, and use tax delinquencies, the remaining credits shall be issued to the applicant, subject to the restrictions of other provisions of law.

11. Except as provided under subdivision (4) of subsection 3 of this section, the director of revenue shall issue a refund to the qualified company to the extent that the amount of credits allowed in this section exceeds the amount of the qualified company's income tax.

12. An employee of a qualified company will receive full credit for the amount of tax withheld as provided in section 143.211, RSMo.

13. If any provision of sections 620.1875 to 620.1890 or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or

application of these sections which can be given effect without the invalid provisions or application, and to this end, the provisions of sections 620.1875 to 620.1890 are hereby declared severable.

620.1892. 1. This section shall be known and may be cited as the "Small Business and Entrepreneurial Growth Act".

2. For all taxable years beginning on or after January 1, 2010, an employer of a small business shall be allowed to receive benefits under subsection 3 of this section if such employer expands such business by increasing the number of jobs and by meeting the following qualifications:

(1) The employer's total payroll for the small business increases by at least twenty percent due to the addition of new jobs or a business with less than five employees adds employees so that the total number of employees is five or greater;

(2) The employer does not exceed ten new technology jobs, twenty new jobs located in a rural area, and forty new jobs located in an urban area; and

(3) Wages for new jobs created by the employer under this section shall be equal to or greater than the county average wage as defined in section 620.1878.

3. Benefits provided under this section shall be as follows:

(1) Retention of all tax withheld under sections 143.191 to 143.265, RSMo, from the newly created jobs for a period of one year; or

(2) If the employer also provides health insurance and pays more than fifty percent of the premiums for all employees, the tax withheld under sections 143.191 to 143.265, RSMo, from newly created jobs may be retained for a period of two years.

4. No employers receiving benefits under this section shall be eligible for any benefits provided under sections 620.1875 to 620.1890.

620.1893. 1. Subject to the requirements in subsections 2 to 5 of this section, the governing body of a municipality may establish a business, education, science, and technology district or "BEST district" in which business, education, science, and technology projects, or "BEST projects", may be implemented according to a business, education, science, and technology plan, or "BEST plan", by passing one or more ordinances establishing such BEST district and adopting such BEST projects and plan. The governing body shall not adopt a BEST project prior to adopting a BEST plan, and shall not adopt a BEST plan prior to establishing a BEST district, but the BEST district may be established and the BEST projects and plan may be adopted concurrently.

2. Each BEST plan shall set forth in writing a general description of the program, and shall include, but need not be limited to:

(1) A description of how the program will advance one or more targeted industry clusters, as defined by the department of commerce, within the BEST district, and how the program will integrate business, education, science, and technology within the BEST district;

(2) A description of the BEST district, including the existing businesses within the district;

(3) The estimated total BEST project costs, BEST eligible project costs, and the timetable for the BEST projects, including any project phasing;

(4) Land acquisition strategy;

(5) The anticipated sources, amounts, and timing of funds to pay the BEST eligible project costs and other BEST project costs, including any BEST revenues as set forth in subsection 8 of this section, any municipal funds as set forth in subdivision (5) of subsection 3 of this section, and any other sources of funds, including the percentage of all BEST project costs and BEST eligible project costs represented by each source of funds;

(6) Evidence of the commitments to finance the BEST project costs;

(7) The anticipated type and term of the obligations to be issued;

(8) The general land uses to apply in the BEST district;

(9) Proof of a commitment by at least one higher education institution, including, but not limited to universities, colleges, and community colleges, to have a significant physical presence in the BEST district, and a description of the educational resources that will be provided by the higher education institution in the BEST district, such as classrooms, curriculum, dedicated faculty, graduate students, and defined partnerships with target industry clusters;

(10) The base year of state sales tax revenues and the base year of state income tax withheld on behalf of existing employees, reported by existing businesses within the BEST district for the year prior to the year in which the governing body holds a public hearing under subsection 4 of this section to consider establishing the BEST district;

(11) The estimate of the incremental increase in the general revenue portion of state sales tax revenue and the estimate of the state income tax withheld by the employer on behalf of new employees expected to fill new jobs created within the BEST district after implementation of the BEST projects;

(12) An affidavit that is signed by the developer or developers attesting that the BEST plan would not be reasonably anticipated to be successful without the appropriation of BEST revenues, as defined in subsection 8 of this section;

(13) The North American Industry Classification System code characterizing the BEST plan and projects;

(14) The total number of individuals employed in the BEST district, broken down by full-time, part-time, and temporary positions;

(15) The total number of full-time equivalent positions in the BEST district;

(16) The current gross wages and state income tax withholdings for individuals employed in the BEST district;

(17) The number of new jobs to be created by any business benefiting from public expenditures in the BEST district, broken down by full-time, part-time, and temporary positions;

(18) The average hourly wage to be paid to all current and new employees at the project site, broken down by full-time, part-time, and temporary positions;

(19) For a BEST district located in a metropolitan statistical area, as defined by the federal Office of Management and Budget, the average hourly wage paid to non-managerial employees in this state for the industries involved in the BEST district, as established by the United States Bureau of Labor Statistics;

(20) For a BEST district located outside of metropolitan statistical areas, the average weekly wage paid to non-managerial employees in the county for industries involved in the BEST district, as established by the United States Department of Commerce;

(21) A list of other community and economic benefits to result from the project;

(22) A list of all development subsidies that any business benefiting from public expenditures in the BEST district has previously received for the BEST projects, and the name of any other granting body from which such subsidies are sought;

(23) A list of all other public investments made or to be made by this state or units of local government to support infrastructure or other needs generated by the BEST projects for which the funding under this section is being sought;

(24) A statement as to whether the BEST projects may reduce employment at any other site within the state resulting from automation, merger, acquisition, corporate restructuring, relocation, or other business activity;

(25) A statement as to whether or not the BEST projects involve the relocation of work from another address and if so, the number of jobs to be relocated and the address from which they are to be relocated;

(26) A report analyzing the resources potentially available to the BEST district in support of the BEST plan; and

(27) A certification by the chief officer of the applicant as to the accuracy of the BEST plan.

3. No BEST plan shall be adopted by a municipality without findings that:

(1) The BEST plan conforms to the comprehensive plan for the development of the municipality as a whole;

(2) The estimated dates, which shall not be more than twenty-five years from the adoption of the ordinance approving a BEST project within a BEST district, of completion of any BEST project and retirement of obligations incurred to finance BEST project costs, provided that no ordinance approving a BEST project shall be adopted later than ten years from the adoption of the ordinance approving the BEST plan under which such project is authorized. No BEST district shall have the power to acquire any real property by eminent domain;

(3) A plan has been developed for relocation assistance for businesses and residences;

(4) BEST revenues do not exceed fifty percent of the overall BEST project costs;

(5) Municipal funding, including funding from entities affiliated with the municipality, such as economic development corporations, will provide funds for the BEST project that constitute at least ten percent of the BEST eligible project costs and will be available to the BEST project within ten years following establishment of the BEST district;

(6) At least one higher education institution, including, but not limited to universities, colleges, and community colleges, has committed to having a significant physical presence in the BEST district, and plans to offer educational resources in the BEST district such as classrooms, curriculum, dedicated faculty, graduate students, and defined partnerships with target industry clusters; and

(7) If the proposed BEST district is not fully contiguous, the proposed district is sufficiently geographically cohesive to ensure that the district will feel and function as a fully contiguous district. Separation of real property by any roadway, whether public or private, or any public right of way, shall not disrupt the contiguous nature of such real property for purposes of this section. Any otherwise non-contiguous real property shall be deemed contiguous with the other real property in the proposed district if the governing body determines that inclusion of the non-contiguous real property would further the municipality's goals in establishing the district, as set forth in the ordinance establishing the district under subsection 1 of this section.

4. Prior to a municipality's establishment of a BEST district and adoption of a BEST plan and one or more BEST projects under subsection 1 of this section, the governing body shall hold a public hearing.

5. (1) Notice of the public hearing required by subsection 4 of this section shall be given by:

(a) Publication. Notice by publication shall be given by publication at least twice, the first publication to be not more than thirty days and the second publication to be not more than ten days prior to the hearing, in a newspaper of general circulation in the area of the proposed development;

(b) Mailing.

(2) The notices issued under this section shall include the following:

(a) The time and place of the public hearing;

(b) The general boundaries of the proposed BEST district or by street location, where possible;

(c) A statement that all interested persons shall be given an opportunity to be heard at the public hearing;

(d) A description of the proposed BEST plan or BEST project and a location and time where the entire plan or project proposal may be reviewed by any interested party; and

(e) Such other matters as the governing body may deem appropriate.

(3) Notice by mailing shall be given by depositing such notice in the United States mail by certified mail addressed to the person or persons in whose name the general taxes for the last preceding year were paid on each lot, block, tract, or parcel of land lying within the proposed BEST district. Such notice shall be mailed not less than ten days prior to the date set for the public hearing. In the event taxes for the last preceding year were not paid, the notice shall also be sent to the persons last listed on the tax rolls within the preceding three years as the owners of such property.

(4) Notice by mailing shall also be given not less than forty-five days prior to the date set for the public hearing to all taxing districts from which taxable property is included in the BEST district, and in addition to the other requirements under paragraph (a) of subdivision (1) of this subsection, the notice shall include an invitation to each taxing district to submit comments to the municipality's governing body concerning the subject matter of the hearing prior to the date of the hearing.

6. Following a municipality's establishment of a BEST district and adoption of a BEST plan and one or more BEST projects under subsection 1 of this section, the "BEST revenues", as defined in subsection 8 of this section, estimated for the businesses within the BEST district and identified by the municipality in the BEST plan adopted by the municipality, shall be available for appropriation by the general assembly from the general revenue fund to the department of economic development for distribution to the treasurer or other designated financial officer of the municipality.

7. The treasurer or other designated financial officer of the municipality shall deposit BEST revenues received from the department of economic development in a segregated fund known as a "BEST Projects Financing Fund". The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, RSMo, the state treasurer may approve disbursements. Upon appropriation, money in the fund shall be used solely for the administration of this section. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

8. For purposes of this section, "BEST revenues" means:

(1) Half of the incremental increase in the general revenue portion of state sales tax revenues received under section 144.020, RSMo, excluding sales taxes that are constitutionally dedicated, taxes deposited to the school district trust fund in accordance with section 144.701, RSMo, sales and use taxes on motor vehicles, trailers, boats and outboard motors and future sales taxes earmarked by law. In no event shall the incremental increase include any amounts attributable to retail sales unless the municipality or authority has proven to the Missouri development finance board and the department of economic development and such entities have made a finding that the sales tax increment attributable to retail sales is from new sources which did not exist in the state during the baseline year. The incremental increase in the general revenue portion of state sales tax revenues for an existing or relocated facility shall be the amount that current state sales tax revenue exceeds the state sales tax revenue in the base year as stated in the BEST plan; and

(2) The state income tax withheld on behalf of new employees by the employers under section 143.221, RSMo, at the businesses located within the project as identified in the BEST plan. The state income tax withholding allowed by this section shall be the municipality's estimate of the amount of state income tax withheld by the employers within the BEST district for new employees who fill new jobs created in the BEST district.

9. No transfer under subsection 6 of this section from the general revenue fund to the department of economic development shall be made unless an appropriation is made from the general revenue fund for that purpose. No municipality shall commit any BEST revenues prior to an appropriation being made for particular BEST projects.

10. The initial appropriation of BEST revenues authorized under subsections 6 and 7 of this section shall not be made to or distributed by the department of economic development to a municipality until the director of the department of economic

development or his or her designee have approved a BEST plan and projects that have been approved by a municipality under subsection 1 of this section, and that call for capture of BEST revenues for the benefit of the BEST plan and projects. The director of economic development or his or her designee shall approve a BEST plan and projects if they find that:

(1) The estimated dates, which shall not be more than twenty-five years from the adoption of the municipal ordinance approving a BEST project within a BEST district, of completion of any BEST project and retirement of obligations incurred to finance BEST project costs have been stated, provided that no ordinance approving a BEST project shall be adopted later than ten years from the adoption of the ordinance approving the BEST plan under which such project is authorized. No BEST district shall have the power to acquire any real property by eminent domain;

(2) BEST revenues do not exceed fifty percent of the total BEST project costs;

(3) Municipal funding, including funding from entities affiliated with the municipality, such as economic development corporations, will provide funds for the BEST project that constitute at least ten percent of the BEST eligible project costs and will be available to the BEST project within ten years following establishment of the BEST district;

(4) At least one higher education institution, including, but not limited to universities, colleges, and community colleges, has committed to having a significant physical presence in the BEST district, and plans to offer educational resources in the BEST district such as classrooms, curriculum, dedicated faculty, graduate students, and defined partnerships with target industry clusters; and

(5) The BEST plan and projects are financially feasible and would result in a net benefit to the state.

11. BEST revenues deposited in the BEST projects financing fund established by the municipality under subsection 7 of this section shall be used to directly pay for BEST eligible project costs or to provide reimbursement for BEST eligible project costs incurred either prior to or after the BEST district is established under this section, and shall include costs related to:

(1) Formation of a BEST district, drafting a BEST plan, and designing BEST projects, including but not limited to reasonable fees of architects, engineers, attorneys, and consultants, and any other reasonably related costs;

(2) Acquisition of land within the boundaries of the BEST district, including but not limited to associated surveyor costs, title related fees, legal fees, brokers' fees, feasibility studies, and other due diligence;

(3) Extension, expansion, and construction of all infrastructure serving the BEST district, including, but not limited to, water services, storm and sanitary sewers, electrical services, roads, sidewalks, and any public amenities;

(4) Developing public buildings and parking, including site preparation and construction; and

(5) Any other costs related to attracting private investment and creating new jobs within the BEST district.

12. Following the initial appropriation of BEST revenues under subsections 6 and 7 of this section and continuing until termination of the BEST district, the municipality shall annually submit a report to the department of economic development which shall provide an update of the BEST projects' timetables, status of municipal funding and other funding sources, including, but not limited to, the number of jobs created, the annual payroll, and the public and private capital investment in the BEST district.

13. This section shall not preclude the implementation of any other type of public incentives, including tax increment financing under sections 99.800 to 99.865, RSMo, community improvement districts under sections 67.1401 to 67.1571, RSMo, and transportation development districts under sections 238.200 to 238.280, RSMo.

14. The development of any BEST project, appropriations of BEST revenues under this section for such BEST project, and the retirement of obligations incurred to finance such BEST project shall not continue more than twenty-five years after a municipality's adoption of such BEST project by ordinance under subsection 1 of this section; provided that, no ordinance approving a BEST project shall be adopted later than ten years from the adoption of the ordinance approving the BEST plan under which such project is authorized. No BEST district shall have the power to acquire any real property by eminent domain.

15. A BEST project area from which BEST revenues may be collected after such BEST project receives all necessary municipal and state approvals under this section, including an appropriation by the general assembly, may include any real property located within the BEST district, regardless of what improvements, if any, are planned for such real property as part of the BEST project, as long as the inclusion of such real property is reasonably expected to contribute to the success of the BEST plan.

16. To expand a BEST district after the district has been established under subsection 1 of this section, the governing body of the municipality shall establish the expanded BEST district under the requirements in this section for establishing a BEST district and, to receive BEST revenues associated with the expanded portion of the BEST district, the provisions in this section applicable to securing an allocation of BEST revenues

for a BEST district shall apply. For purposes of subsection 14 of this section, the expanded portion of the BEST district shall be deemed to have been established at the time of the establishment of the original BEST district.

17. BEST project costs may include, at the prerogative of a municipality or the state, the portion of salaries and expenses of the municipal government, the department of economic development, or the department of revenue reasonably allocable to each BEST project approved for disbursements from the department of economic development for the ongoing administrative functions associated with such BEST project. For municipalities, such amounts shall be recovered from BEST revenues deposited in the "BEST Projects Financing Fund". For the state, such amounts shall be recovered from BEST revenues deposited with the department of economic development under this section.

Section B. Because immediate action is necessary to create job growth in the state of Missouri section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.

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