

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 366

96TH GENERAL ASSEMBLY

1090L.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.1461, 620.1878, and 620.1881, RSMo, and enact in lieu thereof five new sections relating to tax incentives for data storage, server farm, and technology business facilities.

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

Section A. Sections 67.1461, 620.1878, and 620.1881, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 67.1461, 67.2050, 144.810, 620.1878, and 620.1881, to read as follows:

67.1461. 1. Each district shall have all the powers, except to the extent any such power has been limited by the petition approved by the governing body of the municipality to establish the district, necessary to carry out and effectuate the purposes and provisions of sections 67.1401 to 67.1571 including, but not limited to, the following:

(1) To adopt, amend, and repeal bylaws, not inconsistent with sections 67.1401 to 67.1571, necessary or convenient to carry out the provisions of sections 67.1401 to 67.1571;

(2) To sue and be sued;

(3) To make and enter into contracts and other instruments, with public and private entities, necessary or convenient to exercise its powers and carry out its duties pursuant to sections 67.1401 to 67.1571;

(4) To accept grants, guarantees and donations of property, labor, services, or other things of value from any public or private source;

(5) To employ or contract for such managerial, engineering, legal, technical, clerical, accounting, or other assistance as it deems advisable;

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.

15 (6) To acquire by purchase, lease, gift, grant, bequest, devise, or otherwise, any real
16 property within its boundaries, personal property, or any interest in such property;

17 (7) To sell, lease, exchange, transfer, assign, mortgage, pledge, hypothecate, or otherwise
18 encumber or dispose of any real or personal property or any interest in such property;

19 (8) To levy and collect special assessments and taxes as provided in sections 67.1401
20 to 67.1571. However, no such assessments or taxes shall be levied on any property exempt from
21 taxation pursuant to subdivision (5) of section 137.100. Those exempt pursuant to subdivision
22 (5) of section 137.100 may voluntarily participate in the provisions of sections 67.1401 to
23 67.1571;

24 (9) If the district is a political subdivision, to levy real property taxes and business
25 license taxes in the county seat of a county of the first classification containing a population of
26 at least two hundred thousand, as provided in sections 67.1401 to 67.1571. However, no such
27 assessments or taxes shall be levied on any property exempt from taxation pursuant to
28 subdivisions (2) and (5) of section 137.100. Those exempt pursuant to subdivisions (2) and (5)
29 of section 137.100 may voluntarily participate in the provisions of sections 67.1401 to 67.1571;

30 (10) If the district is a political subdivision, to levy sales taxes pursuant to sections
31 67.1401 to 67.1571;

32 (11) To fix, charge, and collect fees, rents, and other charges for use of any of the
33 following:

34 (a) The district's real property, except for public rights-of-way for utilities;

35 (b) The district's personal property, except in a city not within a county; or

36 (c) Any of the district's interests in such real or personal property, except for public
37 rights-of-way for utilities;

38 (12) To borrow money from any public or private source and issue obligations and
39 provide security for the repayment of the same as provided in sections 67.1401 to 67.1571;

40 (13) To loan money as provided in sections 67.1401 to 67.1571;

41 (14) To make expenditures, create reserve funds, and use its revenues as necessary to
42 carry out its powers or duties and the provisions and purposes of sections 67.1401 to 67.1571;

43 (15) To enter into one or more agreements with the municipality for the purpose of
44 abating any public nuisance within the boundaries of the district including, but not limited to,
45 the stabilization, repair or maintenance or demolition and removal of buildings or structures,
46 provided that the municipality has declared the existence of a public nuisance;

47 (16) Within its boundaries, to provide assistance to or to construct, reconstruct, install,
48 repair, maintain, and equip any of the following public improvements:

49 (a) Pedestrian or shopping malls and plazas;

50 (b) Parks, lawns, trees, and any other landscape;

- 51 (c) Convention centers, arenas, aquariums, aviaries, and meeting facilities;
- 52 (d) Sidewalks, streets, alleys, bridges, ramps, tunnels, overpasses and underpasses, traffic
53 signs and signals, utilities, drainage, water, storm and sewer systems, and other site
54 improvements;
- 55 (e) Parking lots, garages, or other facilities;
- 56 (f) Lakes, dams, and waterways;
- 57 (g) Streetscape, lighting, benches or other seating furniture, trash receptacles, marquees,
58 awnings, canopies, walls, and barriers;
- 59 (h) Telephone and information booths, bus stop and other shelters, rest rooms, and
60 kiosks;
- 61 (i) Paintings, murals, display cases, sculptures, and fountains;
- 62 (j) Music, news, and child-care facilities; [and]
- 63 (k) **Any property, device, structure, or equipment necessary for the acquisition,**
64 **installation, equipping, and improvement of any real or personal property used for the**
65 **purpose of creating a solar photovoltaic project or a solar thermal energy project, whether**
66 **such real or personal property is publicly or privately owned; and**
- 67 (l) Any other useful, necessary, or desired improvement;
- 68 (17) To dedicate to the municipality, with the municipality's consent, streets, sidewalks,
69 parks, and other real property and improvements located within its boundaries for public use;
- 70 (18) Within its boundaries and with the municipality's consent, to prohibit or restrict
71 vehicular and pedestrian traffic and vendors on streets, alleys, malls, bridges, ramps, sidewalks,
72 and tunnels and to provide the means for access by emergency vehicles to or in such areas;
- 73 (19) Within its boundaries, to operate or to contract for the provision of music, news,
74 child-care, or parking facilities, and buses, minibuses, or other modes of transportation;
- 75 (20) Within its boundaries, to lease space for sidewalk café tables and chairs;
- 76 (21) Within its boundaries, to provide or contract for the provision of security personnel,
77 equipment, or facilities for the protection of property and persons;
- 78 (22) Within its boundaries, to provide or contract for cleaning, maintenance, and other
79 services to public and private property, **including, but not limited to, real or personal**
80 **property installed as part of a special energy improvement project;**
- 81 (23) To produce and promote any tourism, recreational or cultural activity or special
82 event in the district by, but not limited to, advertising, decoration of any public place in the
83 district, promotion of such activity and special events, and furnishing music in any public place;
- 84 (24) To support business activity and economic development in the district including,
85 but not limited to, the promotion of business activity, development and retention, and the
86 recruitment of developers and businesses;

87 (25) To provide or support training programs for employees of businesses within the
88 district;

89 (26) To provide refuse collection and disposal services within the district;

90 (27) To contract for or conduct economic, planning, marketing or other studies;

91 (28) To repair, restore, or maintain any abandoned cemetery on public or private land
92 within the district; and

93 (29) To carry out any other powers set forth in sections 67.1401 to 67.1571.

94 2. Each district which is located in a blighted area or which includes a blighted area shall
95 have the following additional powers:

96 (1) Within its blighted area, to contract with any private property owner to demolish
97 [and] , remove, renovate, reconstruct, **construct**, or rehabilitate any building [or] , structure, **or**
98 **improvement** owned by such private property owner; and

99 (2) To expend its revenues or loan its revenues pursuant to a contract entered into
100 pursuant to this subsection, provided that the governing body of the municipality has determined
101 that the action to be taken pursuant to such contract is reasonably anticipated to remediate the
102 blighting conditions and will serve a public purpose.

103 3. Each district shall annually reimburse the municipality for the reasonable and actual
104 expenses incurred by the municipality to establish such district and review annual budgets and
105 reports of such district required to be submitted to the municipality; provided that, such annual
106 reimbursement shall not exceed one and one-half percent of the revenues collected by the district
107 in such year.

108 4. Nothing in sections 67.1401 to 67.1571 shall be construed to delegate to any district
109 any sovereign right of municipalities to promote order, safety, health, morals, and general
110 welfare of the public, except those such police powers, if any, expressly delegated pursuant to
111 sections 67.1401 to 67.1571.

112 5. The governing body of the municipality establishing the district shall not decrease the
113 level of publicly funded services in the district existing prior to the creation of the district or
114 transfer the financial burden of providing the services to the district unless the services at the
115 same time are decreased throughout the municipality, nor shall the governing body discriminate
116 in the provision of the publicly funded services between areas included in such district and areas
117 not so included.

**67.2050. 1. As used in this section, unless the context clearly indicates otherwise,
2 the following terms mean:**

3 (1) "Facility", a location composed of real estate, buildings, fixtures, machinery,
4 and equipment;

5 (2) "Municipality", any county, city, incorporated town, or village of the state;

6 (3) "NAICS", the 2007 edition of the North American Industry Classification
7 System developed under the direction and guidance of the federal Office of Management
8 and Budget. Any NAICS sector, subsector, industry group, or industry identified in this
9 section shall include its corresponding classification in previous and subsequent federal
10 industry classification systems;

11 (4) "Technology business facility", a facility purchased, constructed, extended, or
12 improved under this section, provided that such business facility is engaged in:

13 (a) Wired telecommunications carriers (NAICS 517110); or

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

15 (c) Internet publishing and broadcasting and web search portals (NAICS 519130),
16 at the business facility;

17 (5) "Technology business facility project" or "project", the purchase, construction,
18 extension, and improvement of technology business facilities, whether of the facility as a
19 whole or of any one or more of the facility's components of real estate, buildings, fixtures,
20 machinery, and equipment.

21 2. The governing body of any municipality may:

22 (1) Carry out technology business facility projects for economic development under
23 this section;

24 (2) Accept grants from the federal and state governments for technology business
25 facility project purposes, and may enter into such agreements as are not contrary to the
26 laws of this state and which may be required as a condition of grants by the federal
27 government or its agencies; and

28 (3) Receive gifts and donations from private sources to be used for technology
29 business facility project purposes.

30 3. The governing body of the municipality may enter into loan agreements, sell,
31 lease, or mortgage to private persons, partnerships, or corporations any one or more of the
32 components of a facility received, purchased, constructed, or extended by the municipality
33 for development of a technology business facility project. The loan agreement, installment
34 sale agreement, lease, or other such document shall contain such other terms as are agreed
35 upon between the municipality and the obligor, provided that such terms shall be
36 consistent with this section. When, in the judgment of the governing body of the
37 municipality, the technology business facility project will result in economic benefits to the
38 municipality, the governing body may lawfully enter into an agreement that includes
39 nominal monetary consideration to the municipality in exchange for the use of one or more
40 components of the facility.

41 **4. Transactions involving the lease or rental of any components of a project under**
42 **this section shall be specifically exempted from the provisions of the local sales tax law as**
43 **defined in section 32.085, section 238.235, and sections 144.010 to 144.525 and 144.600 to**
44 **144.761, and from the computation of the tax levied, assessed, or payable under the local**
45 **sales tax law as defined in section 32.085, section 238.235, and sections 144.010 to 144.525**
46 **and 144.600 to 144.745.**

47 **5. Leasehold interests granted and held under this section shall not be subject to**
48 **property taxes.**

49 **6. Any payments in lieu of taxes expected to be made by any lessee of the project**
50 **shall be applied in accordance with this section. The lessee may reimburse the municipality**
51 **for its actual costs of administering the plan. All amounts paid in excess of such actual**
52 **costs shall, immediately upon receipt thereof, be disbursed by the municipality's treasurer**
53 **or other financial officer to each affected taxing entity in proportion to the current ad**
54 **valorem tax levy of each affected taxing entity.**

55 **7. The county assessor shall include the current assessed value of all property**
56 **within the affected taxing entities in the aggregate valuation of assessed property entered**
57 **upon the assessor's book and verified under section 137.245, and such value shall be used**
58 **for the purpose of the debt limitation on local government under section 26(b), article VI,**
59 **Constitution of Missouri.**

60 **8. The governing body of any municipality may sell or otherwise dispose of the**
61 **property, buildings, or plants acquired under this section to private persons or**
62 **corporations for technology business facility project purposes upon approval by the**
63 **governing body. The terms and method of the sale or other disposal shall be established**
64 **by the governing body so as to reasonably protect the economic well-being of the**
65 **municipality and to promote the development of technology business facility projects. A**
66 **private person or corporation that initially transfers property to the municipality for the**
67 **purposes of a technology business facility project and does not charge a purchase price to**
68 **the municipality shall retain the right, upon request to the municipality, to have the**
69 **municipality retransfer the donated property to the person or corporation at no cost.**

70 **9. The provisions of this section shall not be construed to allow political**
71 **subdivisions to provide telecommunications services or telecommunications facilities to the**
72 **extent that they are prohibited from doing so by section 392.410.**

144.810. 1. As used in this section, unless the context clearly indicates otherwise,
2 **the following terms mean:**

3 **(1) "Commencement of commercial operations", shall be deemed to occur during**
4 **the first calendar year for which the data storage center or server farm facility is first**

- 5 available for use by the operating taxpayer, or first capable of being used by the operating
6 taxpayer, as a data storage center or server farm facility;
- 7 (2) "Constructing taxpayer", where more than one taxpayer is responsible for a
8 project, a taxpayer responsible for the purchase or construction of the facility, as opposed
9 to a taxpayer responsible for the equipping and ongoing operations of the facility;
- 10 (3) "Data storage center" or "server farm facility" or "facility", a facility
11 purchased, constructed, extended, improved, or operating under this section, provided that
12 such business facility is engaged in:
- 13 (a) Wired telecommunications carriers (NAICS 517110); or
14 (b) Data processing, hosting, and related services (NAICS 518210); or
15 (b) Internet publishing and broadcasting and web search portals (NAICS 519130),
16 at the business facility;
- 17 (4) "Existing facility", a data storage center or server farm facility in this state as
18 it existed prior to August 28, 2011, as determined by the department;
- 19 (5) "Expanding facility" or "expanding data storage center or server farm
20 facility", an existing facility or replacement facility that expands its operations in this state
21 on or after August 28, 2011, and has net new investment related to the expansion of
22 operations in this state of at least one million dollars during a period of up to twelve
23 consecutive months. An expanding facility shall continue to be an expanding facility
24 regardless of a subsequent change in or addition of operating taxpayers or constructing
25 taxpayers;
- 26 (6) "Expanding facility project" or "expanding data storage center or server farm
27 facility project", the purchase, construction, extension, improvement, equipping, and
28 operation of an expanding facility;
- 29 (7) "NAICS", the 2007 edition of the North American Industry Classification
30 System as prepared by the Executive Office of the President, Office of Management and
31 Budget. Any NAICS sector, subsector, industry group, or industry identified in this section
32 shall include its corresponding classification in previous and subsequent federal industry
33 classification systems;
- 34 (8) "New facility" or "new data storage center or server farm facility", a facility
35 in this state meeting the following requirements:
- 36 (a) The facility is acquired by, or leased to, an operating taxpayer on or after
37 August 28, 2011. A facility shall be deemed to have been acquired by, or leased to, an
38 operating taxpayer on or after August 28, 2011, if the transfer of title to an operating
39 taxpayer, the transfer of possession under a binding contract to transfer title to an
40 operating taxpayer, or the commencement of the term of the lease to an operating taxpayer

41 occurs on or after August 28, 2011, or, if the facility is constructed, erected, or installed by
42 or on behalf of an operating taxpayer, such construction, erection, or installation is
43 commenced on or after August 28, 2011;

44 (b) If such facility was acquired by an operating taxpayer from another person or
45 persons on or after August 28, 2011, and such facility was employed prior to August 28,
46 2011, by any other person or persons in the operation of a data storage center or server
47 farm facility, the facility shall not be considered a new facility;

48 (c) Such facility is not a replacement facility, as defined in this section;

49 (d) The new facility project investment is at least five million dollars during a
50 period of up to thirty-six consecutive months. Where more than one taxpayer is
51 responsible for a project, the investment requirement may be met by an operating
52 taxpayer, a constructing taxpayer, or a combination of constructing taxpayers and
53 operating taxpayers; and

54 (e) A new facility shall continue to be a new facility regardless of a subsequent
55 change in or addition of operating taxpayers or constructing taxpayers;

56 (9) "New data storage center or server farm facility project", or "new facility
57 project", the purchase, construction, extension, improvement, equipping, and operation
58 of a new facility;

59 (10) "Operating taxpayer", where more than one taxpayer is responsible for a
60 project, a taxpayer responsible for the equipping and ongoing operations of the facility, as
61 opposed to a taxpayer responsible for the purchasing or construction of the facility;

62 (11) "Project taxpayers", each constructing taxpayer and each operating taxpayer
63 for a data storage center or server farm facility project;

64 (12) "Replacement facility" or "replacement data storage center or server farm
65 facility", a facility in this state otherwise described in subdivision (8) of this subsection, but
66 which replaces another facility located within the state, which the taxpayer or a related
67 taxpayer previously operated but discontinued operating within one year prior to the
68 commencement of commercial operations at the new facility;

69 (13) "Taxpayer", the purchaser of tangible personal property or a service that is
70 subject to state or local sales or use tax and from whom state or local sales or use tax is
71 owed. "Taxpayer" shall not mean the seller charged by law with collecting the sales tax
72 from the purchaser.

73 2. Beginning August 28, 2011, in addition to the exemptions granted under chapter
74 144, there shall also be specifically exempted from state and local sales and use taxes
75 defined, levied, or calculated under section 32.085, sections 144.010 to 144.525, sections
76 144.600 to 144.761, or section 238.235:

77 **(1) All electrical energy, gas, water, and other utilities including telecommunication**
78 **and internet services used in a new data storage center or server farm facility;**

79 **(2) All machinery, equipment, and computers used in any new data storage center**
80 **or server farm facility; and**

81 **(3) All sales at retail of tangible personal property and materials for the purpose**
82 **of constructing, repairing, or remodeling any new data storage center or server farm**
83 **facility.**

84 **3. Any data storage center and server farm facility project seeking a tax exemption**
85 **under subsection 2 of this section shall submit a project plan to the department of economic**
86 **development, including identifying each known constructing taxpayer and each known**
87 **operating taxpayer for the project. The department of economic development shall**
88 **determine whether the project is eligible for the exemption under subsection 2 of this**
89 **section conditional upon subsequent verification by the department that the project meets**
90 **the requirement in paragraph (d) of subdivision (8) of subsection 1 of this section of at least**
91 **five million dollars of new facility investment over a time period not to exceed thirty-six**
92 **consecutive months. The department of economic development shall convey such**
93 **conditional approval to the department of revenue and the identified project taxpayers.**
94 **After a conditionally approved new facility project has met the investment amount, the**
95 **project taxpayers shall provide proof of such investment to the department of economic**
96 **development. Upon verification of such proof, the department of economic development**
97 **shall certify the project to the department of revenue as being eligible for the exemption**
98 **dating retroactively to the first day of the thirty-six month period or the first day of the**
99 **new investment in the event the investment is met in less than thirty-six months. The**
100 **department of revenue, upon receipt of adequate proof of the amount of sales taxes paid**
101 **since the first day of the thirty-six month period, or the first day of the new investment in**
102 **the event the investment is met in less than thirty-six months, shall issue a refund of sales**
103 **taxes paid as set forth in this section to each operating taxpayer and each constructing**
104 **taxpayer and issue a certificate of exemption to each new project taxpayer for ongoing**
105 **exemptions under subsection 2 of this section.**

106 **4. Beginning August 28, 2011, in addition to the exemptions granted under chapter**
107 **144, there shall also be specifically exempted from state and local sales and use taxes**
108 **defined, levied, or calculated under section 32.085, sections 144.010 to 144.525, sections**
109 **144.600 to 144.761, or section 238.235:**

110 **(1) All electrical energy, gas, water, and other utilities including telecommunication**
111 **and internet services used in an expanding data storage center or server farm facility**
112 **which, on an annual basis, exceeds the amount of electrical energy, gas, water, and other**

113 utilities including telecommunication and internet services used in the existing facility or
114 the replaced facility prior to the expansion. "Amount" shall be measured in kilowatt
115 hours, gallons, cubic feet, or other measures applicable to a utility service as opposed to in
116 dollars, to account for increases in rates;

117 (2) All machinery, equipment, and computers used in any expanding data storage
118 center or server farm facility, the cost of which, on an annual basis, exceeds the average of
119 the previous three years' expenditures on machinery, equipment, and computers at the
120 existing facility or the replaced facility prior to the expansion. Existing facilities or
121 replaced facilities in existence for less than three years shall have the average expenditures
122 calculated based upon the applicable time of existence; and

123 (3) All sales at retail of the tangible personal property and materials for the
124 purpose of constructing, repairing, or remodeling any expanding data storage center or
125 server farm facility.

126 5. Any data storage center and server farm facility project seeking a tax exemption
127 under subsection 4 of this section shall submit an expanding project plan to the department
128 of economic development, including identifying each known constructing taxpayer and
129 each known operating taxpayer for the project. The project applicants shall also provide
130 proof satisfactory to the department of economic development that the facility is an
131 expanding facility and has net new investment related to the expansion of operations in this
132 state of at least one million dollars during a time period not to exceed twelve consecutive
133 months. Upon verification of such proof, the department of economic development shall
134 certify the project to the department of revenue as being eligible for the exemption. The
135 department of revenue shall issue a certificate of exemption to each expanding project
136 taxpayer for ongoing exemptions under subsection 4 of this section.

137 6. The sales tax exemptions in subsections 2 and 4 of this section shall be tied to the
138 new or expanding facility project. A certificate of exemption in the hands of a taxpayer
139 that is no longer an operating or constructing taxpayer of the new or expanding facility
140 project shall be invalid as of the date the taxpayer was no longer an operating or
141 constructing taxpayer of the new or expanding facility project. New certificates of
142 exemption shall be issued to successor constructing taxpayers and operating taxpayers at
143 such new or expanding facility projects. The right to the exemption by successor taxpayers
144 shall exist without regard to subsequent levels of investment in the new or expanding
145 facility by successor taxpayers.

146 7. The department of economic development and the department of revenue shall
147 cooperate in conducting random audits to make certain the intent of this section is
148 followed.

149 **8. The department of economic development and the department of revenue shall**
150 **jointly prescribe such rules and regulations necessary to carry out the provisions of this**
151 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
152 **created under the authority delegated in this section shall become effective only if it**
153 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
154 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
155 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
156 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
157 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2011,**
158 **shall be invalid and void.**

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

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

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

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

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

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

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

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

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

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

28 (10) **"High-risk metropolitan statistical area", a metropolitan statistical area as**
29 **identified by the United States Bureau of Census:**

30 **(a) Which is comprised of two or more states including the state of Missouri which**
31 **include at least one county with an average household income equal to two hundred**
32 **percent of the national average household income as determined by the most recent data**
33 **available from the Bureau of Labor Statistics within the United States Department of**
34 **Labor as of the date the qualified business submits its notice of intent; and**

35 **(b) From which at least five businesses have relocated outside of this state in the ten**
36 **calendar years immediately preceding the date of the notice of intent and resulting in the**
37 **loss of at least three thousand of such companies' employees from this state;**

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

42 [(11)] (12) "NAICS", the 1997 edition of the North American Industry Classification
43 System as prepared by the Executive Office of the President, Office of Management and Budget.
44 Any NAICS sector, subsector, industry group or industry identified in this section shall include
45 its corresponding classification in subsequent federal industry classification systems;

46 [(12)] (13) "New direct local revenue", the present value of the dollar amount of direct
47 net new tax revenues of the local political subdivisions likely to be produced by the project over
48 a ten-year period as calculated by the department, excluding local earnings tax, and net new
49 utility revenues, provided the local incentives include a discount or other direct incentives from
50 utilities owned or operated by the political subdivision;

51 [(13)] (14) "New investment"[,] :

52 **(a) For a qualified company not located within a high-risk metropolitan statistical**
53 **area, the purchase or leasing of new tangible assets to be placed in operation at the project**
54 **facility, which will be directly related to the new jobs;**

55 **(b) For a qualified company located within a high-risk metropolitan statistical area,**
56 **funds spent at the project facility after the approval of the notice of intent for real or**
57 **personal property and which may include the present value of finance or capital leases for**
58 **real or personal property for the term of such lease at the project facility executed after**
59 **approval of the notice of intent;**

60 [(14)] (15) "New job", the number of full-time employees located at the project facility
61 that exceeds the project facility base employment less any decrease in the number of full-time

62 employees at related facilities below the related facility base employment. No job that was
63 created prior to the date of the notice of intent shall be deemed a new job. An employee that
64 spends less than fifty percent of the employee's work time at the facility is still considered to be
65 located at a facility if the employee receives his or her directions and control from that facility,
66 is on the facility's payroll, one hundred percent of the employee's income from such employment
67 is Missouri income, and the employee is paid at or above the state average wage;

68 [(15)] (16) "New payroll", the amount of taxable wages of full-time employees,
69 excluding owners, located at the project facility that exceeds the project facility base payroll. If
70 full-time employment at related facilities is below the related facility base employment, any
71 decrease in payroll for full-time employees at the related facilities below that related facility base
72 payroll shall also be subtracted to determine new payroll;

73 [(16)] (17) "Notice of intent", a form developed by the department, completed by the
74 qualified company and submitted to the department which states the qualified company's intent
75 to hire new jobs and request benefits under this program;

76 [(17)] (18) "Percent of local incentives", the amount of local incentives divided by the
77 amount of new direct local revenue;

78 [(18)] (19) "Program", the Missouri quality jobs program provided in sections 620.1875
79 to 620.1890;

80 [(19)] (20) "Project facility", the building used by a qualified company at which the new
81 jobs and new investment will be located. A project facility may include separate buildings that
82 are located within fifteen miles of each other or within the same county such that their purpose
83 and operations are interrelated;

84 [(20)] (21) "Project facility base employment", the greater of the number of full-time
85 employees located at the project facility on the date of the notice of intent or for the
86 twelve-month period prior to the date of the notice of intent, the average number of full-time
87 employees located at the project facility. In the event the project facility has not been in
88 operation for a full twelve-month period, the average number of full-time employees for the
89 number of months the project facility has been in operation prior to the date of the notice of
90 intent;

91 [(21)] (22) "Project facility base payroll", the total amount of taxable wages paid by the
92 qualified company to full-time employees of the qualified company located at the project facility
93 in the twelve months prior to the notice of intent, not including the payroll of the owners of the
94 qualified company unless the qualified company is participating in an employee stock ownership
95 plan. For purposes of calculating the benefits under this program, the amount of base payroll
96 shall increase each year based on an appropriate measure, as determined by the department;

97 [(22)] (23) "Project period", the time period that the benefits are provided to a qualified
98 company;

99 [(23)] (24) "Qualified company", a firm, partnership, joint venture, association, private
100 or public corporation whether organized for profit or not, or headquarters of such entity
101 registered to do business in Missouri that is the owner or operator of a project facility, offers
102 health insurance to all full-time employees of all facilities located in this state, and pays at least
103 fifty percent of such insurance premiums. For the purposes of sections 620.1875 to 620.1890,
104 the term "qualified company" shall not include:

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

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

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

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

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

111 (f) Any company that has filed for or has publicly announced its intention to file for
112 bankruptcy protection. However, a company that has filed for or has publicly announced its
113 intention to file for bankruptcy between January 1, 2009, and December 31, 2009, may be a
114 qualified company provided that such company:

115 a. Certifies to the department that it plans to reorganize and not to liquidate; and

116 b. After its bankruptcy petition has been filed, it produces proof, in a form and at times
117 satisfactory to the department, that it is not delinquent in filing any tax returns or making any
118 payment due to the state of Missouri, including but not limited to all tax payments due after the
119 filing of the bankruptcy petition and under the terms of the plan of reorganization. Any taxpayer
120 who is awarded benefits under this subsection and who files for bankruptcy under Chapter 7 of
121 the United States Bankruptcy Code, Title 11 U.S.C., shall immediately notify the department and
122 shall forfeit such benefits and shall repay the state an amount equal to any state tax credits
123 already redeemed and any withholding taxes already retained;

124 (g) Educational services (NAICS sector 61);

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

126 (i) Public administration (NAICS sector 92);

127 (j) Ethanol distillation or production; or

128 (k) Biodiesel production. Notwithstanding any provision of this section to the contrary,
129 the headquarters or administrative offices of an otherwise excluded business may qualify for
130 benefits if the offices serve a multistate territory. In the event a national, state, or regional
131 headquarters operation is not the predominant activity of a project facility, the new jobs and

132 investment of such headquarters operation is considered eligible for benefits under this section
133 if the other requirements are satisfied;

134 ~~[(24)]~~ **(25)** "Qualified renewable energy sources" shall not be construed to include
135 ethanol distillation or production or biodiesel production; however, it shall include:

136 (a) Open-looped biomass;

137 (b) Close-looped biomass;

138 (c) Solar;

139 (d) Wind;

140 (e) Geothermal; and

141 (f) Hydropower;

142 ~~[(25)]~~ **(26)** "Related company" means:

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

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

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

155 ~~[(26)]~~ **(27)** "Related facility", a facility operated by the qualified company or a related
156 company located in this state that is directly related to the operations of the project facility;

157 ~~[(27)]~~ **(28)** "Related facility base employment", the greater of the number of full-time
158 employees located at all related facilities on the date of the notice of intent or for the
159 twelve-month period prior to the date of the notice of intent, the average number of full-time
160 employees located at all related facilities of the qualified company or a related company located
161 in this state;

162 ~~[(28)]~~ **(29)** "Related facility base payroll", the total amount of taxable wages paid by the
163 qualified company to full-time employees of the qualified company located at a related facility
164 in the twelve months prior to the filing of the notice of intent, not including the payroll of the
165 owners of the qualified company unless the qualified company is participating in an employee
166 stock ownership plan. For purposes of calculating the benefits under this program, the amount

167 of related facility base payroll shall increase each year based on an appropriate measure, as
168 determined by the department;

169 [(29)] (30) "Rural area", a county in Missouri with a population less than seventy-five
170 thousand or that does not contain an individual city with a population greater than fifty thousand
171 according to the most recent federal decennial census;

172 [(30)] (31) "Small and expanding business project", a qualified company that within two
173 years of the date of the approval creates a minimum of twenty new jobs if the project facility is
174 located in a rural area or a minimum of forty new jobs if the project facility is not located in a
175 rural area and creates fewer than one hundred new jobs regardless of the location of the project
176 facility;

177 [(31)] (32) "Tax credits", tax credits issued by the department to offset the state income
178 taxes imposed by chapters 143 and 148, or which may be sold or refunded as provided for in this
179 program;

180 [(32)] (33) "Technology business project", a qualified company that within two years of
181 the date of the approval creates a minimum of ten new jobs involved in the operations of a
182 company:

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

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

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

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

194 [(33)] (34) "Withholding tax", the state tax imposed by sections 143.191 to 143.265. For
195 purposes of this program, the withholding tax shall be computed using a schedule as determined
196 by the department based on average wages.

620.1881. 1. The department of economic development shall respond within thirty days
2 to a company who provides a notice of intent with either an approval or a rejection of the notice
3 of intent. The department shall give preference to qualified companies and projects targeted at
4 an area of the state which has recently been classified as a disaster area by the federal
5 government or in a **high-risk metropolitan statistical area**. Failure to respond on behalf of the
6 department of economic development shall result in the notice of intent being deemed an

7 approval for the purposes of this section. A qualified company who is provided an approval for
8 a project shall be allowed a benefit as provided in this program in the amount and duration
9 provided in this section. A qualified company may receive additional periods for subsequent
10 new jobs at the same facility after the full initial period if the minimum thresholds are met as set
11 forth in sections 620.1875 to 620.1890. There is no limit on the number of periods a qualified
12 company may participate in the program, as long as the minimum thresholds are achieved and
13 the qualified company provides the department with the required reporting and is in proper
14 compliance for this program or other state programs. A qualified company may elect to file a
15 notice of intent to start a new project period concurrent with an existing project period if the
16 minimum thresholds are achieved and the qualified company provides the department with the
17 required reporting and is in proper compliance for this program and other state programs;
18 however, the qualified company may not receive any further benefit under the original approval
19 for jobs created after the date of the new notice of intent, and any jobs created before the new
20 notice of intent may not be included as new jobs for the purpose of benefit calculation in relation
21 to the new approval. When a qualified company has filed and received approval of a notice of
22 intent and subsequently files another notice of intent, the department shall apply the definition
23 of project facility under subdivision [(19)] **(20)** of section 620.1878 to the new notice of intent
24 as well as all previously approved notices of intent and shall determine the application of the
25 definitions of new job, new payroll, project facility base employment, and project facility base
26 payroll accordingly.

27 2. Notwithstanding any provision of law to the contrary, any qualified company that is
28 awarded benefits under this program may not simultaneously receive tax credits or exemptions
29 under sections 135.100 to 135.150, sections 135.200 to 135.286, section 135.535, or sections
30 135.900 to 135.906 at the same project facility. The benefits available to the company under any
31 other state programs for which the company is eligible and which utilize withholding tax from
32 the new jobs of the company must first be credited to the other state program before the
33 withholding retention level applicable under the Missouri quality jobs act will begin to accrue.
34 These other state programs include, but are not limited to, the new jobs training program under
35 sections 178.892 to 178.896, the job retention program under sections 178.760 to 178.764, the
36 real property tax increment allocation redevelopment act, sections 99.800 to 99.865, or the
37 Missouri downtown and rural economic stimulus act under sections 99.915 to 99.980. If any
38 qualified company also participates in the new jobs training program in sections 178.892 to
39 178.896, the company shall retain no withholding tax, but the department shall issue a refundable
40 tax credit for the full amount of benefit allowed under this [subdivision] **subsection**. The
41 calendar year annual maximum amount of tax credits which may be issued to a qualifying
42 company that also participates in the new job training program shall be increased by an amount

43 equivalent to the withholding tax retained by that company under the new jobs training program.
44 However, if the combined benefits of the quality jobs program and the new jobs training program
45 exceed the projected state benefit of the project, as determined by the department of economic
46 development through a cost-benefit analysis, the increase in the maximum tax credits shall be
47 limited to the amount that would not cause the combined benefits to exceed the projected state
48 benefit. Any taxpayer who is awarded benefits under this program who knowingly hires
49 individuals who are not allowed to work legally in the United States shall immediately forfeit
50 such benefits and shall repay the state an amount equal to any state tax credits already redeemed
51 and any withholding taxes already retained.

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

53 (1) Small and expanding business projects: in exchange for the consideration provided
54 by the new tax revenues and other economic stimuli that will be generated by the new jobs
55 created by the program, a qualified company may retain an amount equal to the withholding tax
56 as calculated under subdivision [(33)] (34) of section 620.1878 from the new jobs that would
57 otherwise be withheld and remitted by the qualified company under the provisions of sections
58 143.191 to 143.265 for a period of three years from the date the required number of new jobs
59 were created if the average wage of the new payroll equals or exceeds the county average wage
60 or for a period of five years from the date the required number of new jobs were created if the
61 average wage of the new payroll equals or exceeds one hundred twenty percent of the county
62 average wage;

63 (2) Technology business projects: in exchange for the consideration provided by the new
64 tax revenues and other economic stimuli that will be generated by the new jobs created by the
65 program, a qualified company may retain an amount equal to a maximum of five percent of new
66 payroll for a period of five years from the date the required number of jobs were created from
67 the withholding tax of the new jobs that would otherwise be withheld and remitted by the
68 qualified company under the provisions of sections 143.191 to 143.265 if the average wage of
69 the new payroll equals or exceeds the county average wage. An additional one-half percent of
70 new payroll may be added to the five percent maximum if the average wage of the new payroll
71 in any year exceeds one hundred twenty percent of the county average wage in the county in
72 which the project facility is located, plus an additional one-half percent of new payroll may be
73 added if the average wage of the new payroll in any year exceeds one hundred forty percent of
74 the average wage in the county in which the project facility is located. The department shall
75 issue a refundable tax credit for any difference between the amount of benefit allowed under this
76 subdivision and the amount of withholding tax retained by the company, in the event the
77 withholding tax is not sufficient to provide the entire amount of benefit due to the qualified
78 company under this subdivision;

79 (3) High impact projects: in exchange for the consideration provided by the new tax
80 revenues and other economic stimuli that will be generated by the new jobs created by the
81 program, a qualified company may retain an amount from the withholding tax of the new jobs
82 that would otherwise be withheld and remitted by the qualified company under the provisions
83 of sections 143.191 to 143.265, equal to three percent of new payroll for a period of five years
84 from the date the required number of jobs were created if the average wage of the new payroll
85 equals or exceeds the county average wage of the county in which the project facility is located.
86 For high-impact projects in a facility located within two adjacent counties, the new payroll shall
87 equal or exceed the higher county average wage of the adjacent counties. The percentage of
88 payroll allowed under this subdivision shall be three and one-half percent of new payroll if the
89 average wage of the new payroll in any year exceeds one hundred twenty percent of the county
90 average wage in the county in which the project facility is located. The percentage of payroll
91 allowed under this subdivision shall be four percent of new payroll if the average wage of the
92 new payroll in any year exceeds one hundred forty percent of the county average wage in the
93 county in which the project facility is located. An additional one percent of new payroll may be
94 added to these percentages if local incentives equal between ten percent and twenty-four percent
95 of the new direct local revenue; an additional two percent of new payroll is added to these
96 percentages if the local incentives equal between twenty-five percent and forty-nine percent of
97 the new direct local revenue; or an additional three percent of payroll is added to these
98 percentages if the local incentives equal fifty percent or more of the new direct local revenue.
99 The department shall issue a refundable tax credit for any difference between the amount of
100 benefit allowed under this subdivision and the amount of withholding tax retained by the
101 company, in the event the withholding tax is not sufficient to provide the entire amount of benefit
102 due to the qualified company under this subdivision;

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

106 (a) For each of the twenty-four months preceding the year in which application for the
107 program is made the qualified company must have maintained at least one thousand full-time
108 employees at the employer's site in the state at which the jobs are based, and the average wage
109 of such employees must meet or exceed the county average wage;

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

113 (c) The qualified company is considered to have a significant statewide effect on the
114 economy, and has been determined to represent a substantial risk of relocation from the state by

115 the quality jobs advisory task force established in section 620.1887; provided, however, until
116 such time as the initial at-large members of the quality jobs advisory task force are appointed,
117 this determination shall be made by the director [of the department of economic development];

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

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

141 (5) **Job retention projects within a high-risk metropolitan statistical area: a**
142 **qualified company may retain ninety-five percent of the company's withholding tax from**
143 **full-time jobs located at the high-risk metropolitan statistical area facility for a period of**
144 **ten years for the retention of jobs in this state, provided the qualified company and the**
145 **project meets all of the following conditions:**

146 (a) **For the thirty-day period preceding the qualified company's notice of intent, the**
147 **qualified company must have maintained at least one hundred fifty full-time employees at**
148 **the employer's site in the state at which the jobs are based, and the average wage of such**
149 **employees shall meet or exceed the county or state average wage, whichever is less;**

150 **(b) The qualified company is considered to have a significant statewide effect on**
151 **the economy and has been determined to represent a substantial risk of relocation from the**
152 **state by the quality jobs advisory task force established in section 620.1887;**

153 **(c) The qualified company in the project facility will cause to be invested a**
154 **minimum of ten million dollars in new investment prior to the end of three years or will**
155 **cause to be invested a minimum of five million dollars in new investment prior to the end**
156 **of three years and maintain an annual payroll of at least six million dollars during each of**
157 **the years for which the qualified company retains withholding tax under this program;**

158 **(d) Within six months of approval of the qualified company's notice of intent, the**
159 **qualified company shall enter into an agreement with the department that memorializes**
160 **the content of the notice of intent, the requirements of this section, and the consequences**
161 **for failing to meet such requirements provided in paragraph (e) of this subdivision;**

162 **(e) No later than six months following the expiration of the three-year investment**
163 **period described in paragraph (c) of subdivision (5) of subsection 3 of this section, the**
164 **department shall determine whether the qualified company made the investment as**
165 **required under this paragraph and shall notify the qualified company in writing of such**
166 **determination. If the qualified company failed to make the requisite investment, the**
167 **municipality in which the qualified company is located and the director shall jointly**
168 **determine whether such investment shortfall occurred for reasons outside the qualified**
169 **company's control, including without limitation, as a result of economic conditions. If it**
170 **is determined that the investment shortfall did not occur as a result of reasons beyond the**
171 **control of the qualified company, the director shall provide a written notice of suspension**
172 **to the qualified company and the municipality providing that the qualified company shall**
173 **repay all withholding taxes retained under this program and that within six months of the**
174 **date of suspension notice the director and municipality shall meet with the qualified**
175 **company to determine a revised schedule of investment and the terms of suspension of**
176 **withholding tax retention rights; and**

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

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

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

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

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

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

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

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

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

216 4. The qualified company shall provide an annual report of the number of jobs and such
217 other information as may be required by the department to document the basis for the benefits
218 of this program. The department may withhold the approval of any benefits until it is satisfied
219 that proper documentation has been provided, and shall reduce the benefits to reflect any
220 reduction in full-time employees or new payroll. Upon approval by the department, the qualified
221 company may begin the retention of the withholding taxes when it reaches the minimum number

222 of new jobs and the average wage exceeds the county average wage. Tax credits, if any, may be
223 issued upon satisfaction by the department that the qualified company has exceeded the county
224 average wage and the minimum number of new jobs. In such annual report, if the average wage
225 is below the county average wage, the qualified company has not maintained the employee
226 insurance as required, or if the number of new jobs is below the minimum, the qualified
227 company shall not receive tax credits or retain the withholding tax for the balance of the benefit
228 period. In the case of a qualified company that initially filed a notice of intent and received an
229 approval from the department for high-impact benefits and the minimum number of new jobs
230 in an annual report is below the minimum for high-impact projects, the company shall not
231 receive tax credits for the balance of the benefit period but may continue to retain the
232 withholding taxes if it otherwise meets the requirements of a small and expanding business under
233 this program.

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

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

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

256 8. Tax credits may be claimed against taxes otherwise imposed by chapters 143 and 148,
257 and may not be carried forward but shall be claimed within one year of the close of the taxable

258 year for which they were issued, except as provided under subdivision (4) of subsection 3 of this
259 section.

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

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

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

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

287 13. **Notwithstanding any other provision of law to the contrary, a qualified**
288 **company in a high risk metropolitan statistical area that is awarded benefits under this**
289 **section shall not receive any tax credit or exemption or be entitled to retain withholding**
290 **taxes under section 620.1910.**

291 14. **In addition to any other benefits available under subdivision (5) of subsection**
292 **3 of this section, a qualified company within a high-risk metropolitan statistical area that**
293 **satisfies provisions in subdivision (5) of subsection 3 of this section shall be entitled to tax**

294 credits issued each year for a period of ten years from the date of the approval of the
295 department in an amount equal to three percent of the retained payroll from the retained
296 jobs; provided that in no event shall the total amount of the benefits provided to a qualified
297 company in a high-risk metropolitan statistical area under this section exceed six percent
298 of the retained payroll in any calendar year.

299 **15. Upon approval of a notice of intent to request withholding tax benefits under**
300 **subdivision (5) of subsection 3 of this section or to request tax credits under subdivision (5)**
301 **of subsection 3 of this section, the department and the qualified company in a high-risk**
302 **metropolitan statistical area shall enter into a written agreement covering the applicable**
303 **project period. The agreement shall specify, at a minimum:**

304 **(1) The committed number of retained jobs, payroll, and new capital investment**
305 **for each year during the project period;**

306 **(2) The date or time period during which withholding taxes will be retained or the**
307 **tax credits shall be issued, which may be immediately or over a period not to exceed ten**
308 **years from the date of the approval;**

309 **(3) Clawback provisions provided in paragraph (e) of subdivision (5) of subsection**
310 **3 of this section.**

311 **16. In lieu of all other benefits under subdivision (5) of subsection 3 of this section**
312 **or subsection 14 of this section, the department may award a qualified company within a**
313 **high-risk metropolitan statistical area meeting the requirements of subdivision (5) of**
314 **subsection 3 of this section tax credits in an amount not to exceed ninety percent of the**
315 **amount the qualified company within a high-risk metropolitan statistical area may**
316 **otherwise be eligible to retain for a period of five years under subdivision (5) of subsection**
317 **3 of this section.**

318 **17. Beginning August 28, 2011, in addition to the exemptions granted under chapter**
319 **144, the department may approve a qualified company in a high-risk metropolitan**
320 **statistical area for an exemption of up to one hundred percent of the state sales and use**
321 **taxes defined, levied, or calculated under sections 144.010 to 144.525, sections 144.600 to**
322 **144.761, or section 238.235 for a period not to exceed three years from the date of approval**
323 **of sales and leases of tangible personal property purchased for use in the project facility**
324 **and of sales and leases of tangible personal property and materials for the purpose of**
325 **constructing, repairing, or remodeling the project facility. To qualify for the exemption**
326 **provided in this subsection, the qualified company shall:**

327 **(1) Retain at least one hundred fifty retained jobs at the project facility in which**
328 **the average wage meets or exceeds the county of state average wage, whichever is less;**

329 **(2) Commit to making at least ten million dollars in new capital investment at a**
330 **project facility within a period of three years from the date of approval, or cause to be**
331 **invested at least five million dollars in new capital investment within a period of three**
332 **years from the date of approval and maintain an annual payroll of at least six million**
333 **dollars during each of the years for which the qualified company receives a benefit under**
334 **this section.**

335 **18.** If any provision of sections 620.1875 to 620.1890 or application thereof to any
336 person or circumstance is held invalid, the invalidity shall not affect other provisions or
337 application of these sections which can be given effect without the invalid provisions or
338 application, and to this end, the provisions of sections 620.1875 to 620.1890 are hereby declared
339 severable.

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