

SECOND REGULAR SESSION

# HOUSE BILL NO. 1164

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES SOLON (Sponsor), FISHER,  
HOUGHTON AND DENISON (Co-sponsors).

4741L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 620.1881, RSMo, and to enact in lieu thereof one new section relating to job retention.

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

Section A. Section 620.1881, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 620.1881, to read as follows:

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 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 if the minimum thresholds are met as set forth in sections 620.1875 to 620.1890. There is no limit on the number 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

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.

17 compliance for this program and other state programs; however, the qualified company may not  
18 receive any further benefit under the original approval for jobs created after the date of the new  
19 notice of intent, and any jobs created before the new notice of intent may not be included as new  
20 jobs for the purpose of benefit calculation in relation to the new approval. When a qualified  
21 company has filed and received approval of a notice of intent and subsequently files another  
22 notice of intent, the department shall apply the definition of project facility under subdivision  
23 (19) of section 620.1878 to the new notice of intent as well as all previously approved notices  
24 of intent and shall determine the application of the definitions of new job, new payroll, project  
25 facility base employment, and project facility base payroll accordingly.

26         2. Notwithstanding any provision of law to the contrary, any qualified company that is  
27 awarded benefits under this program may not simultaneously receive tax credits or exemptions  
28 under sections 135.100 to 135.150, sections 135.200 to 135.286, section 135.535, or sections  
29 135.900 to 135.906 at the same project facility. The benefits available to the company under any  
30 other state programs for which the company is eligible and which utilize withholding tax from  
31 the new jobs of the company must first be credited to the other state program before the  
32 withholding retention level applicable under the Missouri quality jobs act will begin to accrue.  
33 These other state programs include, but are not limited to, the new jobs training program under  
34 sections 178.892 to 178.896, the job retention program under sections 178.760 to 178.764, the  
35 real property tax increment allocation redevelopment act, sections 99.800 to 99.865, or the  
36 Missouri downtown and rural economic stimulus act under sections 99.915 to 99.980. If any  
37 qualified company also participates in the new jobs training program in sections 178.892 to  
38 178.896, the company shall retain no withholding tax, but the department shall issue a refundable  
39 tax credit for the full amount of benefit allowed under this [subdivision] **subsection**. The  
40 calendar year annual maximum amount of tax credits which may be issued to a qualifying  
41 company that also participates in the new job training program shall be increased by an amount  
42 equivalent to the withholding tax retained by that company under the new jobs training program.  
43 However, if the combined benefits of the quality jobs program and the new jobs training program  
44 exceed the projected state benefit of the project, as determined by the department of economic  
45 development through a cost-benefit analysis, the increase in the maximum tax credits shall be  
46 limited to the amount that would not cause the combined benefits to exceed the projected state  
47 benefit. Any taxpayer who is awarded benefits under this program who knowingly hires  
48 individuals who are not allowed to work legally in the United States shall immediately forfeit  
49 such benefits and shall repay the state an amount equal to any state tax credits already redeemed  
50 and any withholding taxes already retained.

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

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

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

77 (3) High impact projects: in exchange for the consideration provided by the new tax  
78 revenues and other economic stimuli that will be generated by the new jobs created by the  
79 program, a qualified company may retain an amount from the withholding tax of the new jobs  
80 that would otherwise be withheld and remitted by the qualified company under the provisions  
81 of sections 143.191 to 143.265, equal to three percent of new payroll for a period of five years  
82 from the date the required number of jobs were created if the average wage of the new payroll  
83 equals or exceeds the county average wage of the county in which the project facility is located.  
84 For high-impact projects in a facility located within two adjacent counties, the new payroll shall  
85 equal or exceed the higher county average wage of the adjacent counties. The percentage of  
86 payroll allowed under this subdivision shall be three and one-half percent of new payroll if the  
87 average wage of the new payroll in any year exceeds one hundred twenty percent of the county

88 average wage in the county in which the project facility is located. The percentage of payroll  
89 allowed under this subdivision shall be four percent of new payroll if the average wage of the  
90 new payroll in any year exceeds one hundred forty percent of the county average wage in the  
91 county in which the project facility is located. An additional one percent of new payroll may be  
92 added to these percentages if local incentives equal between ten percent and twenty-four percent  
93 of the new direct local revenue; an additional two percent of new payroll is added to these  
94 percentages if the local incentives equal between twenty-five percent and forty-nine percent of  
95 the new direct local revenue; or an additional three percent of payroll is added to these  
96 percentages if the local incentives equal fifty percent or more of the new direct local revenue.  
97 The department shall issue a refundable tax credit for any difference between the amount of  
98 benefit allowed under this subdivision and the amount of withholding tax retained by the  
99 company, in the event the withholding tax is not sufficient to provide the entire amount of benefit  
100 due to the qualified company under this subdivision;

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

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

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

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

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

122 (e) The local taxing entities shall provide local incentives of at least fifty percent of the  
123 new direct local revenues created by the project over a ten-year period. The quality jobs advisory

124 task force may recommend to the department of economic development that appropriate  
125 penalties be applied to the company for violating the agreement. The amount of the job retention  
126 credit granted may be equal to up to fifty percent of the amount of withholding tax generated by  
127 the full-time jobs at the project facility for a period of five years. The calendar year annual  
128 maximum amount of tax credit that may be issued to any qualified company for a job retention  
129 project or combination of job retention projects shall be seven hundred fifty thousand dollars per  
130 year, but the maximum amount may be increased up to ~~[one]~~ **two** million dollars if such action  
131 is proposed by the department and approved by the quality jobs advisory task force established  
132 in section 620.1887; provided, however, until such time as the initial at-large members of the  
133 quality jobs advisory task force are appointed, this determination shall be made by the director  
134 of the department of economic development. In considering such a request, the task force shall  
135 rely on economic modeling and other information supplied by the department when requesting  
136 the increased limit on behalf of the job retention project. In no event shall the total amount of  
137 all tax credits issued for the entire job retention program under this subdivision exceed three  
138 million dollars annually. Notwithstanding the above, no tax credits shall be issued for job  
139 retention projects approved by the department after August 30, ~~[2013]~~ **2018**;

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

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

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

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

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

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

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

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

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

179 4. The qualified company shall provide an annual report of the number of jobs **retained**  
180 **above the minimum** and such other information as may be required by the department to  
181 document the basis for the benefits of this program. The department may withhold the approval  
182 of any benefits until it is satisfied that proper documentation has been provided, and shall reduce  
183 the benefits to reflect any reduction in full-time employees or new payroll **below the minimum**.  
184 Upon approval by the department, the qualified company may begin the retention of the  
185 withholding taxes when it reaches the minimum number of [new] **retained** jobs and the average  
186 wage exceeds the county average wage. Tax credits, if any, may be issued upon satisfaction by  
187 the department that the qualified company has exceeded the county average wage and the  
188 minimum number of new jobs. In such annual report, if the average wage is below the county  
189 average wage, the qualified company has not maintained the employee insurance as required, or  
190 if the number of new jobs is below the minimum, the qualified company shall not receive tax  
191 credits or retain the withholding tax for the balance of the benefit period. In the case of a  
192 qualified company that initially filed a notice of intent and received an approval from the  
193 department for high-impact benefits and the minimum number of new jobs in an annual report  
194 is below the minimum for high-impact projects, the company shall not receive tax credits for the

195 balance of the benefit period but may continue to retain the withholding taxes if it otherwise  
196 meets the requirements of a small and expanding business under this program.

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

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

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

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

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

227           10. Prior to the issuance of tax credits, the department shall verify through the  
228 department of revenue, or any other state department, that the tax credit applicant does not owe  
229 any delinquent income, sales, or use tax or interest or penalties on such taxes, or any delinquent  
230 fees or assessments levied by any state department and through the department of insurance,

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

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

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

250           13. If any provision of sections 620.1875 to 620.1890 or application thereof to any  
251 person or circumstance is held invalid, the invalidity shall not affect other provisions or  
252 application of these sections which can be given effect without the invalid provisions or  
253 application, and to this end, the provisions of sections 620.1875 to 620.1890 are hereby declared  
254 severable.

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