

SECOND REGULAR SESSION

# HOUSE BILL NO. 1245

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES LAUER (Sponsor), ZERR, DIEHL, TORPEY, BROWN (116)  
AND LAIR (Co-sponsors).

5099L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 620.1878 and 620.1881, RSMo, and to enact in lieu thereof two new sections relating to the Missouri quality jobs act.

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

Section A. Sections 620.1878 and 620.1881, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 620.1878 and 620.1881, to read as follows:

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

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

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

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

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

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

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

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

41 (13) **"New capital investment", shall include costs incurred by the qualified  
42 company at the project facility after acceptance by the qualified company of the proposal  
43 for benefits from the department or the approval of the notice of intent, whichever occurs  
44 first, for real or personal property, and may include the value of finance or capital leases  
45 for real or personal property for the term of such lease at the project facility executed after  
46 acceptance by the qualified company of the proposal for benefits from the department or  
47 approval of the notice of intent;**

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

50 [(14)] (15) "New job", the number of full-time employees located at the project facility  
51 that exceeds the project facility base employment less any decrease in the number of full-time  
52 employees at related facilities below the related facility base employment. No job that was

53 created prior to the date of the notice of intent shall be deemed a new job. An employee that  
54 spends less than fifty percent of the employee's work time at the facility is still considered to be  
55 located at a facility if the employee receives his or her directions and control from that facility,  
56 is on the facility's payroll, one hundred percent of the employee's income from such employment  
57 is Missouri income, and the employee is paid at or above the state average wage;

58 [(15)] (16) "New payroll", the amount of taxable wages of full-time employees,  
59 excluding owners, located at the project facility that exceeds the project facility base payroll. If  
60 full-time employment at related facilities is below the related facility base employment, any  
61 decrease in payroll for full-time employees at the related facilities below that related facility base  
62 payroll shall also be subtracted to determine new payroll;

63 [(16)] (17) "Notice of intent", a form developed by the department, completed by the  
64 qualified company and submitted to the department which states the qualified company's intent  
65 to hire new jobs and request benefits under this program;

66 [(17)] (18) "Percent of local incentives", the amount of local incentives divided by the  
67 amount of new direct local revenue;

68 [(18)] (19) "Program", the Missouri quality jobs program provided in sections 620.1875  
69 to 620.1890;

70 [(19)] (20) "Project facility", the building used by a qualified company at which the new  
71 jobs and new investment will be located. A project facility may include separate buildings that  
72 are located within fifteen miles of each other or within the same county such that their purpose  
73 and operations are interrelated;

74 [(20)] (21) "Project facility base employment", the greater of the number of full-time  
75 employees located at the project facility on the date of the notice of intent or for the  
76 twelve-month period prior to the date of the notice of intent, the average number of full-time  
77 employees located at the project facility. In the event the project facility has not been in  
78 operation for a full twelve-month period, the average number of full-time employees for the  
79 number of months the project facility has been in operation prior to the date of the notice of  
80 intent;

81 [(21)] (22) "Project facility base payroll", the total amount of taxable wages paid by the  
82 qualified company to full-time employees of the qualified company located at the project facility  
83 in the twelve months prior to the notice of intent, not including the payroll of the owners of the  
84 qualified company unless the qualified company is participating in an employee stock ownership  
85 plan. For purposes of calculating the benefits under this program, the amount of base payroll  
86 shall increase each year based on an appropriate measure, as determined by the department;

87 [(22)] (23) "Project period", the time period that the benefits are provided to a qualified  
88 company;

89           **(24) "Projected net fiscal benefit", the total fiscal benefit to the state less any state**  
90 **benefits offered to the qualified company;**

91           [(23)] **(25) "Qualified company", a firm, partnership, joint venture, association, private**  
92 **or public corporation whether organized for profit or not, or headquarters of such entity**  
93 **registered to do business in Missouri that is the owner or operator of a project facility, offers**  
94 **health insurance to all full-time employees of all facilities located in this state, and pays at least**  
95 **fifty percent of such insurance premiums. For the purposes of sections 620.1875 to 620.1890,**  
96 **the term "qualified company" shall not include:**

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

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

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

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

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

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

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

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

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

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

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

119           (j) Ethanol distillation or production; or

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

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

126       [(24)] **(26)** "Qualified renewable energy sources" shall not be construed to include  
127 ethanol distillation or production or biodiesel production; however, it shall include:

128       (a) Open-looped biomass;

129       (b) Close-looped biomass;

130       (c) Solar;

131       (d) Wind;

132       (e) Geothermal; and

133       (f) Hydropower;

134       [(25)] **(27)** "Related company" means:

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

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

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

147       [(26)] **(28)** "Related facility", a facility operated by the qualified company or a related  
148 company located in this state that is directly related to the operations of the project facility;

149       [(27)] **(29)** "Related facility base employment", the greater of the number of full-time  
150 employees located at all related facilities on the date of the notice of intent or for the  
151 twelve-month period prior to the date of the notice of intent, the average number of full-time  
152 employees located at all related facilities of the qualified company or a related company located  
153 in this state;

154       [(28)] **(30)** "Related facility base payroll", the total amount of taxable wages paid by the  
155 qualified company to full-time employees of the qualified company located at a related facility  
156 in the twelve months prior to the filing of the notice of intent, not including the payroll of the  
157 owners of the qualified company unless the qualified company is participating in an employee  
158 stock ownership plan. For purposes of calculating the benefits under this program, the amount

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

161 [(29)] (31) "Rural area", a county in Missouri with a population less than seventy-five  
162 thousand or that does not contain an individual city with a population greater than fifty thousand  
163 according to the most recent federal decennial census;

164 [(30)] (32) "Small and expanding business project", a qualified company that within two  
165 years of the date of the approval creates a minimum of twenty new jobs if the project facility is  
166 located in a rural area or a minimum of forty new jobs if the project facility is not located in a  
167 rural area and creates fewer than one hundred new jobs regardless of the location of the project  
168 facility;

169 [(31)] (33) "Tax credits", tax credits issued by the department to offset the state income  
170 taxes imposed by chapters 143 and 148, or which may be sold or refunded as provided for in this  
171 program;

172 [(32)] (34) "Technology business project", a qualified company that within two years of  
173 the date of the approval creates a minimum of ten new jobs involved in the operations of a  
174 company:

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

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

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

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

186 [(33)] (35) "Withholding tax", the state tax imposed by sections 143.191 to 143.265. For  
187 purposes of this program, the withholding tax shall be computed using a schedule as determined  
188 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. Failure to respond on behalf of the department of economic development shall  
6 result in the notice of intent being deemed an approval for the purposes of this section. A

7 qualified company who is provided an approval for a project shall be allowed a benefit as  
8 provided in this program in the amount and duration provided in this section. A qualified  
9 company may receive additional periods for subsequent new jobs at the same facility after the  
10 full initial period if the minimum thresholds are met as set forth in sections 620.1875 to  
11 620.1890. There is no limit on the number of periods a qualified company may participate in the  
12 program, as long as the minimum thresholds are achieved and the qualified company provides  
13 the department with the required reporting and is in proper compliance for this program or other  
14 state programs. A qualified company may elect to file a notice of intent to start a new project  
15 period concurrent with an existing project period if the minimum thresholds are achieved and  
16 the qualified company provides the department with the required reporting and is in proper  
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)] **(20)** of section 620.1878 to the new notice of intent as well as all previously approved  
24 notices of intent and shall determine the application of the definitions of new job, new payroll,  
25 project 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)] **(35)** of section 620.1878 from the new jobs that would  
56 otherwise be withheld and remitted by the qualified company under the provisions of sections  
57 143.191 to 143.265 for a period of three years from the date the required number of new jobs  
58 were created if the average wage of the new payroll equals or exceeds the county average wage  
59 or for a period of five years from the date the required number of new jobs were created if the  
60 average wage of the new payroll equals or exceeds one hundred twenty percent of the county  
61 average wage;

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



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

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

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

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

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

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

117 (d) The qualified company in the project facility will cause to be invested a minimum  
118 of seventy million dollars in new investment prior to the end of two years or will cause to be  
119 invested a minimum of thirty million dollars in new investment prior to the end of two years and  
120 maintain an annual payroll of at least seventy million dollars during each of the years for which  
121 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 million dollars if such action is  
131 proposed by the department and approved by the quality jobs advisory task force established in  
132 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;

140 **(5) Job retention projects: In lieu of the benefits provided under subdivision (4) of**  
141 **this subsection and in exchange for the consideration provided by the tax revenues and**  
142 **other economic stimuli that will be generated by the retention of jobs and new capital**  
143 **investment in this state, a qualified company may be eligible to receive the benefits**  
144 **described in this subdivision if the department determines that there is a significant**  
145 **probability that the qualified company would relocate to another state in the absence of**  
146 **the benefits authorized under this subdivision;**

147 **(a) A qualified company meeting the requirements of this subdivision may be**  
148 **authorized to retain an amount not to exceed one hundred percent of the withholding tax**  
149 **from full-time jobs that would otherwise be withheld and remitted by the qualified**

150 company under the provisions of sections 143.191 to 143.265, for a period of ten years if  
151 the average wage of the retained jobs equals or exceeds ninety percent of the county  
152 average wage. In order to receive benefits under this subdivision, a qualified company  
153 shall enter into a written agreement, with the department, containing detailed performance  
154 requirements and repayment penalties in the event of nonperformance. The amount of  
155 benefits awarded to a qualified company under this subdivision shall not exceed the  
156 projected net fiscal benefit and shall not exceed the least amount necessary to obtain the  
157 qualified company's commitment to retain the necessary number of jobs and make the  
158 required new capital investment;

159 (b) In order to be eligible to receive benefits under this subdivision, the qualified  
160 company shall meet each of the following conditions:

161 a. The qualified company shall agree to retain, for a period of ten years from the  
162 date of approval of the notice of intent, at least one hundred and twenty-five full-time  
163 employees; and

164 b. The qualified company shall agree to make a new capital investment at the  
165 project facility within three years from the approval of the notice of intent in an amount  
166 equal to one half the total benefits provided under this subdivision, which are offered to  
167 the qualified company by the department;

168 (c) In awarding benefits under this subdivision, the department shall consider the  
169 following factors:

170 a. The significance of the qualified company's need for program benefits;

171 b. The amount of projected net fiscal benefit to the state of the project and the  
172 period in which the state would realize such net fiscal benefit;

173 c. The overall size and quality of the proposed project, including the number of new  
174 jobs, new capital investment, proposed wages, growth potential of the qualified company,  
175 the potential multiplier effect of the project, and similar factors;

176 d. The financial stability and creditworthiness of the qualified company;

177 e. The level of economic distress in the area;

178 f. An evaluation of the competitiveness of alternative locations for the project  
179 facility, as applicable;

180 (d) Upon approval of a notice of intent to request benefits under this subdivision,  
181 the department and the qualified company shall enter into a written agreement covering  
182 the applicable project period. The agreement shall specify, at a minimum:

183 a. The committed number of full-time employees, payroll, and new capital  
184 investment for each year during the project period;

185 b. Clawback provisions, as may be required by the department; and

- 186           **c. Any other provisions the department may require;**
- 187           **(6) In no event shall the total amount of all benefits provided in subdivisions (5) and**  
188 **(7) of this subsection for all qualified companies under this subdivision exceed six million**  
189 **dollars for all fiscal years beginning on or after July 1, 2012;**
- 190           **(7) A qualified company meeting the requirements of subdivision (5) of this**  
191 **subsection may elect a one-time issuance of tax credits in an amount not to exceed eighty**  
192 **percent of the amount the qualified company may otherwise be eligible to retain for a**  
193 **period of ten years under subdivision (5) of this subsection;**
- 194           **(a) In addition to satisfying each of the requirements of subdivision (5) of this**  
195 **subsection, a qualified company requesting tax credits under this subdivision shall provide**  
196 **to the department, prior to approval, evidence of commitments for the financing of any**  
197 **applicable new capital investment. The new capital investment shall be made at the project**  
198 **facility within three years of the date of approval;**
- 199           **(b) Upon approval of a notice of intent to request tax credits under this subdivision,**  
200 **the department and the qualified company shall enter into a written agreement covering**  
201 **the applicable project period. The agreement shall specify, at a minimum:**
- 202           **a. The committed number of jobs, payroll, and new capital investment for each**  
203 **year during the project period;**
- 204           **b. The date or time period during which the tax credits shall be issued, which may**  
205 **be immediately or over a period not to exceed three years from the date of approval;**
- 206           **c. Penalties, including the recapture of tax credits awarded under this subdivision,**  
207 **for failure to satisfy the requirements provided under this subdivision and subdivision (5)**  
208 **of this subsection; and**
- 209           **d. Any other provisions the department may require;**
- 210           **(8) Prior to the award of benefits under subdivision (5) or (7) of this subsection, the**  
211 **director of the department shall notify the president pro tem of the senate and the speaker**  
212 **of the house of representatives of the amount of the proposed award, including the county**  
213 **and city in which the project facility is located, the number of retained jobs and the**  
214 **average wages for such retained jobs, the estimated amount of new capital investment, and**  
215 **the amount of the projected net fiscal benefit to the state from the project; provided that,**  
216 **nothing herein shall require the disclosure of information otherwise protected from**  
217 **disclosure by law;**
- 218           **[(5)] (9) Small business job retention and flood survivor relief: a qualified company may**  
219 **receive a tax credit under sections 620.1875 to 620.1890 for the retention of jobs and flood**  
220 **survivor relief in this state for each job retained over a three-year period, provided that:**

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

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

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

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

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

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

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

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

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

275           5. The maximum calendar year annual tax credits issued for the entire program shall not  
276 exceed eighty million dollars, **with ten million dollars reserved to be awarded under**  
277 **subsection 14 of this section.** Notwithstanding any provision of law to the contrary, the  
278 maximum annual tax credits authorized under section 135.535 are hereby reduced from ten  
279 million dollars to eight million dollars, with the balance of two million dollars transferred to this  
280 program. There shall be no limit on the amount of withholding taxes that may be retained by  
281 approved companies under this program.

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

293 of intent or the department may provide a new approval for a new project of the qualified  
294 company at the project facility or other facilities.

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

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

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

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

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

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

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

334           **14. For each calendar year beginning on or after January 1, 2013, but ending on**  
335 **or before December 31, 2014, in lieu of all other benefits available under this program, the**  
336 **department may authorize a qualified company meeting the requirements of this**  
337 **subsection and subsection 3 of this section to be issued tax credits in an amount not to**  
338 **exceed seven percent of new payroll from the new jobs created projected over a period of**  
339 **five years from the date the required number of new jobs are to be created, or, if the**  
340 **qualified company is in a targeted industry identified by the department by rule following**  
341 **a strategic planning process as being critical to the state's economic security and growth,**  
342 **the department may authorize tax credits in an amount not to exceed nine percent of new**  
343 **payroll from the new jobs created, projected over a period of five years. The amount of**  
344 **benefits awarded to a qualified company under this section shall not exceed the projected**  
345 **net fiscal benefit to the state over a ten year period, as determined by the department, and**  
346 **may not exceed the least amount necessary to obtain the qualified company's commitment**  
347 **to initiate the project. In no event shall the tax credits authorized under this subsection**  
348 **exceed ten million dollars annually.**

349           **(1) Prior to approval, a qualified company requesting benefits under this subsection**  
350 **shall provide evidence of commitments for the financing of any applicable new capital**  
351 **investment. The new capital investment shall be made at the project facility within two**  
352 **years of the date of approval of the notice of intent.**

353           **(2) In awarding tax credits under this subsection, the department shall consider**  
354 **factors set forth in subsection 2 of this section.**

355           **(3) Upon approval of a notice of intent to receive tax credits under this subsection,**  
356 **the department and the qualified company shall enter into a written agreement covering**  
357 **the applicable project period containing detailed performance requirements and**  
358 **repayment penalties in event of nonperformance. The agreement shall specify, at a**  
359 **minimum:**

360           **(a) The committed number of new jobs, payroll, and new capital investment for**  
361 **each year during the project period;**

362           **(b) The date or time period during which the tax credits shall be issued, which may**  
363 **be immediately or over a period not to exceed two years from the date of approval of the**  
364 **notice of intent;**



365 (c) Clawback provisions provided under subdivision (4) of this subsection; and

366 (d) Any other provisions necessary to effectuate the intent of this subsection.

367 (4) The following clawback provisions shall apply to any benefits awarded under  
368 this subsection:

369 (a) If a qualified company fails to meet any requirements of this section, including  
370 the applicable number of new jobs created or new capital investment within two years  
371 from the date of approval of its notice of intent, the qualified company shall repay the face  
372 amount of all tax credits received from the department, plus interest of nine percent per  
373 annum from the date the tax credits were issued. However, the director may, in his or her  
374 discretion, provide an extension up to two additional years or reduce such payment, if such  
375 failure is caused by documented unforeseen events that negatively affected the operations  
376 at the project facility that were not under the control of the qualified company;

377 (b) If, during any year of the project period, the average wage of the new payroll  
378 paid by the qualified company fails to equal or exceed the applicable percentage of the  
379 county average wage, or the qualified company fails to offer and pay fifty percent of the  
380 premium for health insurance to all of its full-time employees located in this state, the  
381 company shall refund to the state an amount equal to the face amount of all tax credits  
382 received from the department under this program, divided by the number of years in the  
383 project period. In addition to the refund, the qualified company shall pay interest of nine  
384 percent per annum from the date the tax credits were issued on the amount of the refund;

385 (c) If the qualified company fails to meet its payroll commitment for any year  
386 during the project period, it shall refund to the state a portion of its total benefit received  
387 under this section based on the following formula: the total amount of tax credits received  
388 by the qualified company, divided by the number of years during the project period, and  
389 multiplied by a fraction, the numerator of which is the contractually agreed-upon amount  
390 of payroll for that year minus the actual amount of payroll made by the company during  
391 the year, and the denominator of which is the contractually agreed upon amount of payroll  
392 made for that same year. In addition to the refund, the qualified company shall pay  
393 interest of nine percent per annum from the date the tax credits were issued on the amount  
394 of the refund;

395 (d) If the qualified company fails to meet its payroll or new capital investment  
396 requirements for any year during the project period and the director has a reasonable  
397 belief that the qualified company will not be able to meet its performance requirements  
398 during all or any portion of the remainder of the project period, the director may require  
399 the company to repay all or a proportionate amount of the total tax credits received by the  
400 company attributable to the remaining years of the project period as well as the current

401 year, plus interest of nine percent per annum on the amount of repayment from the date  
402 the tax credits were issued.

403 (5) Prior to the award of benefits under this subsection, the director of the  
404 department shall notify the president pro tem of the senate and the speaker of the house  
405 of representatives of the amount of the proposed award, including the county and city in  
406 which the project facility is located, the number of new jobs and the proposed wages for  
407 such new jobs, the estimated amount of new capital investment, and the amount of the  
408 projected net fiscal benefit to the state from the project; provided that, nothing herein shall  
409 require the disclosure of information otherwise protected from disclosure by law.

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