

FIRST REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1061

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE EGGLESTON.

2242H.01P

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal section 620.2005, RSMo, and to enact in lieu thereof one new section relating to the Missouri works program.

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

Section A. Section 620.2005, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 620.2005, to read as follows:

620.2005. 1. As used in sections 620.2000 to 620.2020, the following terms mean:

- 2 (1) "Average wage", the new payroll divided by the number of new jobs, or the payroll  
3 of the retained jobs divided by the number of retained jobs;
- 4 (2) "Commencement of operations", the starting date for the qualified company's first  
5 new employee, which shall be no later than twelve months from the date of the approval;
- 6 (3) "Contractor", a person, employer, or business entity that enters into an agreement to  
7 perform any service or work or to provide a certain product in exchange for valuable  
8 consideration. This definition shall include but not be limited to a general contractor,  
9 subcontractor, independent contractor, contract employee, project manager, or a recruiting or  
10 staffing entity;
- 11 (4) "County average wage", the average wages in each county as determined by the  
12 department for the most recently completed full calendar year. However, if the computed county  
13 average wage is above the statewide average wage, the statewide average wage shall be deemed  
14 the county average wage for such county for the purpose of determining eligibility. The  
15 department shall publish the county average wage for each county at least annually.

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.

16 Notwithstanding the provisions of this subdivision to the contrary, for any qualified company  
17 that in conjunction with their project is relocating employees from a Missouri county with a  
18 higher county average wage, the company shall obtain the endorsement of the governing body  
19 of the community from which jobs are being relocated or the county average wage for their  
20 project shall be the county average wage for the county from which the employees are being  
21 relocated;

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

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

24 (7) "Employee", a person employed by a qualified company, excluding:

25 (a) Owners of the qualified company unless the qualified company is participating in an  
26 employee stock ownership plan; or

27 (b) Owners of a noncontrolling interest in stock of a qualified company that is publicly  
28 traded;

29 (8) "Existing Missouri business", a qualified company that, for the ten-year period  
30 preceding submission of a notice of intent to the department, had a physical location in Missouri  
31 and full-time employees who routinely performed job duties within Missouri;

32 (9) "Full-time employee", an employee of the qualified company that is scheduled to  
33 work an average of at least thirty-five hours per week for a twelve-month period, and one for  
34 which the qualified company offers health insurance and pays at least fifty percent of such  
35 insurance premiums. An employee that spends less than fifty percent of the employee's work  
36 time at the facility shall be considered to be located at a facility if the employee receives his or  
37 her directions and control from that facility, is on the facility's payroll, one hundred percent of  
38 the employee's income from such employment is Missouri income, and the employee is paid at  
39 or above the applicable percentage of the county average wage;

40 (10) "Industrial development authority", an industrial development authority organized  
41 under chapter 349 that has entered into a formal written memorandum of understanding with an  
42 entity of the United States Department of Defense regarding a qualified military project;

43 (11) "Infrastructure projects", highways, roads, streets, bridges, sewers, traffic control  
44 systems and devices, water distribution and supply systems, curbing, sidewalks, storm water and  
45 drainage systems, broadband internet infrastructure, and any other similar public improvements,  
46 but in no case shall infrastructure projects include private structures;

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

51 (13) "Manufacturing capital investment", expenditures made by a qualified  
52 manufacturing company to retool or reconfigure a manufacturing project facility directly related  
53 to the manufacturing of a new product or the expansion or modification of the manufacture of  
54 an existing product;

55 (14) "Memorandum of understanding", an agreement executed by an industrial  
56 development authority and an entity of the United States Department of Defense, a copy of which  
57 is provided to the department of economic development, that states, but is not limited to:

58 (a) A requirement for the military to provide the total number of existing jobs, jobs  
59 directly created by a qualified military project, and average salaries of such jobs to the industrial  
60 development authority and the department of economic development annually for the term of the  
61 benefit;

62 (b) A requirement for the military to provide an accounting of the expenditures of capital  
63 investment made by the military directly related to the qualified military project to the industrial  
64 development authority and the department of economic development annually for the term of the  
65 benefit;

66 (c) The process by which the industrial development authority shall monetize the tax  
67 credits annually and any transaction cost or administrative fee charged by the industrial  
68 development authority to the military on an annual basis;

69 (d) A requirement for the industrial development authority to provide proof to the  
70 department of economic development of the payment made to the qualified military project  
71 annually, including the amount of such payment;

72 (e) The schedule of the maximum amount of tax credits which may be authorized in each  
73 year for the project and the specified term of the benefit, as provided by the department of  
74 economic development; and

75 (f) A requirement that the annual benefit paid shall be the lesser of:

76 a. The maximum amount of tax credits authorized; or

77 b. The actual calculated benefit derived from the number of new jobs and average  
78 salaries;

79 (15) "NAICS" or "NAICS industry classification", the classification provided by the  
80 most recent edition of the North American Industry Classification System as prepared by the  
81 Executive Office of the President, Office of Management and Budget;

82 (16) "New capital investment", shall include costs incurred by the qualified company at  
83 the project facility after acceptance by the qualified company of the proposal for benefits from  
84 the department or the approval notice of intent, whichever occurs first, for real or personal  
85 property, and may include the value of finance or capital leases for real or personal property for

86 the term of such lease at the project facility executed after acceptance by the qualified company  
87 of the proposal for benefits from the department or the approval of the notice of intent;

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

93 (18) "New job", the number of full-time employees located at the project facility that  
94 exceeds the project facility base employment less any decrease in the number of full-time  
95 employees at related facilities below the related facility base employment. No job that was  
96 created prior to the date of the notice of intent shall be deemed a new job;

97 (19) "New payroll", the amount of wages paid for all new jobs, located at the project  
98 facility during the qualified company's tax year that exceeds the project facility base payroll;

99 (20) "New product", a new model or line of a manufactured good that has not been  
100 manufactured in Missouri by a qualified manufacturing company at any time prior to the date of  
101 the notice of intent, or an existing brand, model, or line of a manufactured good that is  
102 redesigned;

103 (21) "Notice of intent", a form developed by the department and available online,  
104 completed by the qualified company, and submitted to the department stating the qualified  
105 company's intent to request benefits under this program. The notice of intent shall be  
106 accompanied with a detailed plan by the qualifying company to make good faith efforts to  
107 employ, at a minimum, commensurate with the percentage of minority populations in the state  
108 of Missouri, as reported in the previous decennial census, the following: racial minorities,  
109 contractors who are racial minorities, and contractors that, in turn, employ at a minimum racial  
110 minorities commensurate with the percentage of minority populations in the state of Missouri,  
111 as reported in the previous decennial census. At a minimum, such plan shall include monitoring  
112 the effectiveness of outreach and recruitment strategies in attracting diverse applicants and  
113 linking with different or additional referral sources in the event that recruitment efforts fail to  
114 produce a diverse pipeline of applicants;

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

117 (23) "Program", the Missouri works program established in sections 620.2000 to  
118 620.2020;

119 (24) "Project facility", the building or buildings used by a qualified company at which  
120 new or retained jobs and any new capital investment are or will be located or by a qualified  
121 manufacturing company at which a manufacturing capital investment is or will be located. A

122 project facility may include separate buildings located within sixty miles of each other such that  
123 their purpose and operations are interrelated; provided that where the buildings making up the  
124 project facility are not located within the same county, the average wage of the new payroll shall  
125 exceed the applicable percentage of the highest county average wage among the counties in  
126 which the buildings are located. Upon approval by the department, a subsequent project facility  
127 may be designated if the qualified company demonstrates a need to relocate to the subsequent  
128 project facility at any time during the project period. For qualified military projects, the term  
129 "project facility" means the military base or installation at which such qualified military project  
130 is or shall be located;

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

138 (26) "Project facility base payroll", the annualized payroll for the project facility base  
139 employment or the total amount of taxable wages paid by the qualified company to full-time  
140 employees of the qualified company located at the project facility in the twelve months prior to  
141 the notice of intent. For purposes of calculating the benefits under this program, the amount of  
142 base payroll shall increase each year based on an appropriate measure, as determined by the  
143 department;

144 (27) "Project period", the time period within which benefits are awarded to a qualified  
145 company or within which the qualified company is obligated to perform under an agreement with  
146 the department, whichever is greater;

147 (28) "Projected net fiscal benefit", the total fiscal benefit to the state less any state  
148 benefits offered to the qualified company, as determined by the department;

149 (29) "Qualified company", a firm, partnership, joint venture, association, private or  
150 public corporation whether organized for profit or not, or headquarters of such entity registered  
151 to do business in Missouri that is the owner or operator of a project facility, certifies that it offers  
152 health insurance to all full-time employees of all facilities located in this state, and certifies that  
153 it pays at least fifty percent of such insurance premiums. For the purposes of sections 620.2000  
154 to 620.2020, the term "qualified company" shall not include:

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

156 (b) Store front consumer-based retail trade establishments (under NAICS sectors 44 and  
157 45), except with respect to any company headquartered in this state with a majority of its

158 full-time employees engaged in operations not within the NAICS codes specified in this  
159 subdivision **and except for any such establishments located in a county of the third or**  
160 **fourth classification;**

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

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

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

165 (f) Any company requesting benefits for retained jobs that has filed for or has publicly  
166 announced its intention to file for bankruptcy protection. However, a company that has filed for  
167 or has publicly announced its intention to file for bankruptcy may be a qualified company  
168 provided that such company:

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

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

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

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

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

181 (j) Ethanol distillation or production;

182 (k) Biodiesel production; or

183 (l) Health care and social services (NAICS sector 62).

184

185 Notwithstanding any provision of this section to the contrary, the headquarters, administrative  
186 offices, or research and development facilities of an otherwise excluded business may qualify  
187 for benefits if the offices or facilities serve a multistate territory. In the event a national, state,  
188 or regional headquarters operation is not the predominant activity of a project facility, the jobs  
189 and investment of such operation shall be considered eligible for benefits under this section if  
190 the other requirements are satisfied;

191 (30) "Qualified manufacturing company", a company that:

192 (a) Is a qualified company that manufactures motor vehicles (NAICS group 3361);

193 (b) Manufactures goods at a facility in Missouri;

194 (c) Manufactures a new product or has commenced making a manufacturing capital  
195 investment to the project facility necessary for the manufacturing of such new product, or  
196 modifies or expands the manufacture of an existing product or has commenced making a  
197 manufacturing capital investment for the project facility necessary for the modification or  
198 expansion of the manufacture of such existing product; and

199 (d) Continues to meet the requirements of paragraphs (a) to (c) of this subdivision for  
200 the project period;

201 (31) "Qualified military project", the expansion or improvement of a military base or  
202 installation within this state that causes:

203 (a) An increase of ten or more military or civilian support personnel:

204 a. Whose average salaries equal or exceed ninety percent of the county average wage;  
205 and

206 b. Who are offered health insurance, with an entity of the United States Department of  
207 Defense paying at least fifty percent of such insurance premiums; and

208 (b) Investment in real or personal property at the base or installation expressly for the  
209 purposes of serving a new or expanded military activity or unit;

210 (32) "Related company", shall mean:

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

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

214 (c) Corporations, partnerships, trusts or associations controlled by an individual,  
215 corporation, partnership, trust, or association in control of the qualified company. As used in this  
216 paragraph, "control of a qualified company" shall mean:

217 a. Ownership, directly or indirectly, of stock possessing at least fifty percent of the total  
218 combined voting power of all classes of stock entitled to vote in the case of a qualified company  
219 that is a corporation;

220 b. Ownership of at least fifty percent of the capital or profit interest in such qualified  
221 company if it is a partnership or association;

222 c. Ownership, directly or indirectly, of at least fifty percent of the beneficial interest in  
223 the principal or income of such qualified company if it is a trust, and ownership shall be  
224 determined as provided in Section 318 of the Internal Revenue Code of 1986, as amended;

225 (33) "Related facility", a facility operated by the qualified company or a related company  
226 located in this state that is directly related to the operations of the project facility or in which  
227 operations substantially similar to the operations of the project facility are performed;

228 (34) "Related facility base employment", the greater of the number of full-time  
229 employees located at all related facilities on the date of the notice of intent or, for the

230 twelve-month period prior to the date of the notice of intent, the average number of full-time  
231 employees located at all related facilities of the qualified company or a related company located  
232 in this state;

233 (35) "Related facility base payroll", the annualized payroll of the related facility base  
234 payroll or the total amount of taxable wages paid by the qualified company to full-time  
235 employees of the qualified company located at a related facility in the twelve months prior to the  
236 filing of the notice of intent. For purposes of calculating the benefits under this program, the  
237 amount of related facility base payroll shall increase each year based on an appropriate measure,  
238 as determined by the department;

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

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

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

247 2. This section is subject to the provisions of section 196.1127.

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