

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 92
AN ACT

To amend chapter 620, RSMo, by adding thereto seven new sections relating to rural access to capital incentives.

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

Section A. Chapter 620, RSMo, is amended by adding thereto
2 seven new sections, to be known as sections 620.3500, 620.3505,
3 620.3510, 620.3515, 620.3520, 620.3525, and 620.3530, to read
4 as follows:

620.3500. Sections 620.3500 to 620.3530 shall be known
2 and may be cited as the "Missouri Rural Access to Capital
3 Act".

620.3505. As used in sections 620.3500 to 620.3530,
2 the following terms shall mean:

3 (1) "Affiliate", an entity that directly, or
4 indirectly through one or more intermediaries, controls, or
5 is controlled by, or is under common control with another
6 entity. An entity is controlled by another entity if the
7 controlling entity holds, directly or indirectly, the
8 majority voting or ownership interest in the controlled
9 entity or has control over day-to-day operations of the
10 controlled entity by contract or by law;

11 (2) "Affiliate capital", capital raised by the rural
12 investor directly or indirectly from sources, including
13 leverage sources, directors, members, employees, officers,
14 and affiliates of the rural investor, other than the amount

15 invested by the allocatee claiming the tax credits in
16 exchange for such allocation of tax credits;

17 (3) "Agribusiness", a business that produces or
18 provides any goods or services produced in this state
19 normally used by farmers, ranchers, or producers and
20 harvesters of aquatic products in their business operations,
21 or to improve the welfare or livelihood of such persons, or
22 is involved in the processing and marketing of agricultural
23 products, farm supplies, and input suppliers, or is engaged
24 in agribusiness as defined by the United States Department
25 of Agriculture, or if not engaged in such industries, the
26 department determines that such investment will be
27 beneficial to the rural area and the economic growth of the
28 state;

29 (4) "Applicable percentage", zero percent for the
30 initial credit allowance date and the second credit
31 allowance date, and fifteen percent for the next four credit
32 allowance dates;

33 (5) "Base employment", the total number of qualified
34 employees receiving taxable wages from the eligible business
35 in the tax year preceding the date of the initial capital
36 investment;

37 (6) "Base payroll", the total amount of taxable wages
38 paid by the eligible business to qualified employees in the
39 tax year preceding the date of the initial capital
40 investment;

41 (7) "Base revenue", the total net revenue earned by
42 the eligible business in the tax year preceding the date of
43 the initial capital investment;

44 (8) "Base taxable sales", the taxable sales of the
45 eligible business in the tax year preceding the date of the
46 initial investment;

47 (9) "Capital investment", any equity investment in a
48 rural fund by a rural investor which:

49 (a) Is acquired after the effective date of sections
50 620.3500 to 620.3530 at its original issuance solely in
51 exchange for cash;

52 (b) Has one hundred percent of its cash purchase price
53 used by the rural fund to make qualified investments in
54 eligible businesses located in this state by the third
55 credit allowance date; and

56 (c) Is designated by the rural fund as a capital
57 investment under sections 620.3500 to 620.3530 and is
58 certified by the department under the provisions of section
59 620.3510. This shall include any capital investment that
60 does not meet the provisions of subdivision (1) of
61 subsection 1 of section 620.3510 if such investment was a
62 capital investment in the hands of a prior holder;

63 (10) "Credit allowance date", the anniversary of the
64 initial credit allowance date;

65 (11) "Department", the Missouri department of economic
66 development;

67 (12) "Eligible business", a business that, at the time
68 of the initial qualified investment in the business:

69 (a) Has fewer than two hundred fifty employees;

70 (b) Has its principal business operations in this
71 state; and

72 (c) Is engaged in North American Industry
73 Classification System (NAICS) Sectors 11, 21, 22, 31-33, 48-
74 49, 62, or 811, or, if not engaged in such industries, the
75 department determines that such investment will be
76 beneficial to the rural area and economic growth of the
77 state.

78 Any business which is classified as an eligible business at
79 the time of the initial investment in such business by a

80 rural fund shall remain classified as an eligible business
81 and may receive follow-on investments from any rural fund,
82 and such follow-on investments shall be qualified
83 investments even though such business may not meet paragraph
84 (a) of this subdivision at the time of such investments;
85 (13) "Full-time employee", an employee of an eligible
86 business who is scheduled to work an average of at least
87 thirty-five hours per week for a twelve-month period;
88 (14) "Initial credit allowance date", the date on
89 which the department certifies a rural fund's capital
90 investment;
91 (15) "Leverage source", third party capital raised as
92 debt from a depository institution;
93 (16) "Maintained job", the number of qualified
94 employees at the eligible business at or below base
95 employment;
96 (17) "Maintained payroll", the total taxable wages
97 paid by the eligible business to qualified employees at or
98 below base payroll;
99 (18) "Maintained revenue", the total revenue earned by
100 the eligible business at or below base revenue;
101 (19) "Maintained taxable sales", the total taxable
102 sales of the eligible business at or below base taxable
103 sales;
104 (20) "New jobs", the number of qualified employees at
105 the eligible business less the eligible business' base
106 employment;
107 (21) "New payroll", the amount of taxable wages paid
108 to qualified employees at the eligible business less the
109 eligible business' base payroll;
110 (22) "New revenue", the total revenue earned by the
111 eligible business less the eligible business' base revenue;

112 (23) "New taxable sales", the total taxable sales of
113 the eligible business less the eligible business' base
114 taxable sales;

115 (24) "Principal business operations", the location
116 where at least sixty percent of a business's employees work
117 or where employees who are paid at least sixty percent of
118 such business's payroll work. A business that has agreed to
119 relocate employees using the proceeds of a qualified
120 investment to establish its principal business operations in
121 a new location shall be deemed to have its principal
122 business operations in such new location if it satisfied the
123 requirements of this subdivision no later than one hundred
124 eighty days after receiving a qualified investment;

125 (25) "Purchase price", the amount paid to the rural
126 fund that issues a capital investment which shall not exceed
127 the amount of capital investment authority certified under
128 the provisions of section 620.3510;

129 (26) "Qualified employee", an employee of an eligible
130 business who is scheduled to work an average of at least
131 thirty-five hours per week for a twelve-month period or
132 meets the customary practices accepted by that industry as
133 full time;

134 (27) "Qualified investment", any investment in an
135 eligible business or any loan to an eligible business with a
136 stated maturity date of at least one year after the date of
137 issuance, excluding revolving lines of credit and senior
138 secured debt unless the chief executive or similar officer
139 of the eligible business certifies that the eligible
140 business sought and was denied similar financing from a
141 depository institution, by a rural fund; provided that, with
142 respect to any one eligible business, the maximum amount of
143 investments made in such business by one or more rural
144 funds, on a collective basis with all of the businesses'

145 affiliates, with the proceeds of capital investments shall
146 be the greater of twenty percent of the rural fund's capital
147 investment authority or six million five hundred thousand
148 dollars, exclusive of investments made with repaid or
149 redeemed investments or interest or profits realized thereon;

150 (28) "Rural area", any area of this state that is set
151 out in the United States Department of Agriculture census
152 places map as published by the United States Department of
153 Agriculture with a census place population of less than
154 fifty thousand inhabitants;

155 (29) "Rural fund", an entity certified by the
156 department under the provisions of section 620.3510;

157 (30) "Rural investor", an entity that makes a capital
158 investment in a rural fund;

159 (31) "Senior secured debt", any loan that is secured
160 by a first mortgage on real estate with a loan-to-value
161 ratio of less than eighty percent;

162 (32) "State sharing ratio", the ratio equal to the sum
163 of the actual and projected direct and indirect state and
164 local tax benefits following a rural fund's qualified
165 investments in eligible businesses, including but not
166 limited to the state and local tax benefits from new jobs,
167 maintained jobs, new payroll, maintained payroll, new
168 revenue, maintained revenue, new taxable sales, and
169 maintained taxable sales, which direct and indirect state
170 and local tax benefits shall be determined using a
171 nationally recognized dynamic economic forecasting model,
172 divided by the amount of tax credits earned by the rural
173 investor of such rural fund. The economic forecasting model
174 used at the beginning of the program shall be the same model
175 used for the remainder of the program and shall project
176 state and local tax benefits for a minimum of ten years;

177 (33) "State tax liability", any liability incurred by
178 any entity subject to the state income tax imposed under
179 chapter 143, excluding withholding tax imposed under
180 sections 143.191 to 143.265, or an insurance company paying
181 an annual tax on its gross premium receipts, including
182 retaliatory tax, or other financial institution paying taxes
183 to the state or any political subdivision of the state under
184 the provisions of chapter 148, or an express company which
185 pays an annual tax on its gross receipts in this state;

186 (34) "Taxable sales", taxable sales as reported to the
187 Missouri department of revenue, calculated as set forth in
188 sections 144.010 to 144.525;

189 (35) "Third party capital", the difference between the
190 rural fund's capital investment and the sum of the amount
191 invested by the allocatee claiming the tax credits and the
192 affiliate capital.

620.3510. 1. A rural fund that seeks to have an
2 equity investment certified as a capital investment eligible
3 for credits authorized under the provisions of sections
4 620.3500 to 620.3530 shall apply to the department. The
5 department shall begin accepting applications within ninety
6 days of the effective date of sections 620.3500 to
7 620.3530. The application shall include:

- 8 (1) The amount of capital investment requested;
- 9 (2) A copy of the applicant's or an affiliate of the
10 applicant's license as a rural business investment company
11 under 7 U.S.C. Section 2009cc or as a small business
12 investment company under 15 U.S.C. Section 681 and a
13 certificate executed by an executive officer of the
14 applicant attesting that such license remains in effect and
15 has not been revoked;

16 (3) Evidence that, as of the date the application is
17 submitted, the applicant or affiliates of the applicant have
18 invested:

19 (a) At least one hundred million dollars in nonpublic
20 companies located in counties within the United States with
21 a population of less than fifty thousand according to the
22 2020 decennial census of United States; and

23 (b) At least thirty million dollars in nonpublic
24 companies located in Missouri;

25 (4) A business plan that includes a revenue impact
26 assessment projecting state and local tax revenue to be
27 generated by the applicant's proposed qualified investments,
28 prepared by a nationally recognized, third-party,
29 independent economic forecasting firm using the same dynamic
30 economic forecasting model used to calculate the state
31 sharing ratio that analyzes the applicant's business plan in
32 yearly increments over the ten years following the date the
33 application is submitted to the department. Such plan shall
34 include an estimate of the new and maintained jobs, new and
35 maintained payroll, new and maintained revenue, and new and
36 maintained taxable sales in this state as a result of the
37 applicant's qualified investments; and

38 (5) A nonrefundable application fee of five thousand
39 dollars payable to the department.

40 2. Within sixty days after the receipt of a completed
41 application, the department shall grant or deny the
42 application in full or in part. The department shall deny
43 the application if:

44 (1) The applicant does not satisfy all of the criteria
45 provided under subsection 1 of this section;

46 (2) The revenue impact assessment submitted with the
47 application does not demonstrate that the applicant's
48 business plan will result in a positive fiscal impact on

49 this state over a ten-year period that exceeds the
50 cumulative amount of tax credits that would be issued to the
51 applicant if the application were approved; or

52 (3) The department has already approved the maximum
53 amount of capital investment authority under section
54 620.3515.

55 3. If the department denies any part of the
56 application, it shall inform the applicant of the grounds
57 for such denial. If the applicant provides any additional
58 information required by the department or otherwise
59 completes its application within fifteen days of the notice
60 of denial, the application shall be considered complete as
61 of the original date of resubmission. If the applicant
62 fails to provide the information or fails to complete its
63 application within the fifteen-day period, the application
64 shall remain denied and shall be resubmitted in full with a
65 new submission date and a new application fee.

66 4. Upon approval of an application, the department
67 shall certify the proposed equity investment as a capital
68 investment eligible for credits under sections 620.3500 to
69 620.3530, subject to the limitations contained in section
70 620.3515. The department shall provide written notice of
71 the certification to the applicant, which shall include the
72 amount of the applicant's capital investment authority. The
73 department shall certify capital investments in the order
74 that the applications are received by the department.
75 Applications received on the same day shall be deemed to
76 have been received simultaneously. For applications that
77 are complete and received on the same day, the department
78 shall certify applications in proportionate percentages
79 based upon the ratio of the amount of capital investment
80 authority requested in an application to the total amount of
81 capital investment authority requested in all applications.

620.3515. 1. The department shall certify capital investment authority under the provisions of sections 620.3500 to 620.3530 in amounts that would authorize not more than sixteen million dollars in state tax credits to be claimed against state tax liability in any calendar year, excluding any credit amounts carried forward as provided under subsection 1 of section 620.3520. Within ninety days of the applicant receiving notice of certification, the rural fund shall issue the capital investment to, and receive cash in the amount of the certified amount from, a rural investor. At least ten percent of the rural investor's capital investment shall be composed of affiliate capital. The rural fund shall provide the department with evidence of the receipt of the cash investment within ninety-five days of the applicant receiving notice of certification. Such evidence shall include details of the third-party capital raised, including from any leverage source.

2. If the rural fund does not receive the cash investment and issue the capital investment within such time period following receipt of the certification notice, the certification shall lapse and the rural fund shall not issue the capital investment without reapplying to the department for certification. Lapsed certifications shall revert to the department and shall be reissued pro rata to applicants whose capital investment allocations were reduced during the immediately preceding application cycle in accordance with the application process provided under subsection 4 of section 620.3510. Any lapsed certification not reissued within the same calendar year as the lapsed certification was issued shall not be reissued.

3. A rural fund, before making a qualified investment, may request from the department a written opinion as to

34 whether the business in which it proposes to invest is an
35 eligible business. Such request shall be on a form
36 developed by the department to be completed by the eligible
37 business and the rural fund. If the department fails to
38 notify the rural fund of its determination by the twentieth
39 business day following its receipt of the completed form and
40 all information necessary to form its opinion, the business
41 in which the rural fund proposes to invest shall be deemed
42 an eligible business.

620.3520. 1. Upon making a capital investment in a
2 rural fund, a rural investor shall have a vested right to
3 earn a tax credit that will be issued by the department that
4 may be used against such entity's state tax liability that
5 may be utilized on each credit allowance date of such
6 capital investment in an amount equal to the applicable
7 percentage for such credit allowance date multiplied by the
8 purchase price paid to the rural fund for the capital
9 investment. The amount of the credit claimed by a rural
10 investor shall not exceed the amount of such entity's state
11 tax liability for the tax year for which the credit is
12 claimed. Any amount of credit that a rural investor is
13 prohibited from claiming in a taxable year as a result of
14 this section may be carried forward for use in any of the
15 five subsequent taxable years, and shall not be carried back
16 to prior taxable years. A rural investor claiming a credit
17 under the provisions of sections 620.3500 to 620.3530 shall
18 not incur any additional tax that may arise as a result of
19 claiming such credit.

20 2. No credit claimed under the provisions of sections
21 620.3500 to 620.3530 shall be refundable or sellable on the
22 open market. Credits earned by or allocated to a
23 partnership, limited liability company, or S-corporation may
24 be allocated to the partners, members, or shareholders of

25 such entity for their direct use in accordance with the
26 provisions of any agreement among such partners, members, or
27 shareholders, and a rural fund shall notify the department
28 of the names of the entities that are eligible to utilize
29 credits pursuant to an allocation of credits or a change in
30 allocation of credits, or due to a transfer of a capital
31 investment upon such allocation, change, or transfer. Such
32 allocation shall not be considered a sale for the purposes
33 of this section.

34 3. The department may recapture credits from a
35 taxpayer that claimed a credit authorized under this section
36 if:

37 (1) The rural fund does not invest sixty percent of
38 its capital investment authority in qualified investments in
39 this state within two years of the credit allowance date,
40 and one hundred percent of its capital investment authority
41 in qualified investments in this state within three years of
42 the credit allowance date, provided that at least seventy
43 percent of such initial qualified investments shall be made
44 in eligible businesses located in rural areas or eligible
45 businesses that are also agribusinesses. In no event shall
46 more than thirty percent of such initial qualified
47 investments be made in eligible businesses located outside
48 of a rural area;

49 (2) The rural fund fails to maintain qualified
50 investments equal to ninety percent of its capital
51 investment authority from the third until the sixth credit
52 allowance date, with seventy percent of such investments
53 maintained in eligible businesses located in rural areas or
54 eligible businesses that are also agribusinesses, provided
55 that in no event shall more than thirty percent of such
56 qualified investments be made in eligible businesses located
57 outside of a rural area. For each year the rural fund fails

58 to maintain such investments, the department may recapture
59 an amount of such year's allowed credits equal to the
60 percentage difference between ninety percent of a rural
61 fund's capital investment authority and the actual amount of
62 qualified investments maintained for such year. For the
63 purposes of this subdivision, a qualified investment is
64 considered maintained even if the qualified investment was
65 sold or repaid so long as the rural fund reinvests an amount
66 equal to the capital returned or recovered by the rural fund
67 from the original investment, exclusive of any profits
68 realized, in other qualified investments in this state
69 within twelve months of the receipt of such capital.
70 Amounts received periodically by a rural fund shall be
71 treated as continually invested in qualified investments if
72 the amounts are reinvested in one or more qualified
73 investments by the end of the following calendar year. A
74 rural fund shall not be required to reinvest capital
75 returned from qualified investments after the fifth credit
76 allowance date, and such qualified investments shall be
77 considered held continuously by the rural fund through the
78 sixth credit allowance date;

79 (3) The rural fund, before exiting the program in
80 accordance with sections 620.3500 to 620.3530 or prior to
81 thirty days after the sixth credit allowance date, whichever
82 is earlier, makes a distribution or payment that results in
83 the rural fund having less than one hundred percent of its
84 capital investment authority invested in qualified
85 investments in this state or held in cash or other
86 marketable securities; or

87 (4) The rural fund violates the provisions of section
88 620.3525, in which case the department may recapture an
89 amount equal to the amount of a rural fund's capital

90 investment authority found to be in violation of such
91 provisions.

92 For the purposes of meeting and maintaining the objectives
93 established for investment in subdivisions (1) and (2) of
94 this subsection, a rural fund's qualified investments shall
95 be multiplied by a factor of one and a quarter in counties
96 with less than thirty thousand in population and more than
97 thirteen thousand in population and shall be multiplied by a
98 factor of one and a half in counties with a population of
99 thirteen thousand or less according to the most recent
100 decennial census.

101 4. No recapture shall occur until the rural fund has
102 been given notice of noncompliance and afforded six months
103 from the date of such notice to cure the noncompliance.

620.3525. No eligible business that receives a
2 qualified investment under the provisions of sections
3 620.3500 to 620.3530, or any affiliates of such eligible
4 businesses, shall directly or indirectly:

5 (1) Own or have the right to acquire an ownership
6 interest in a rural fund or member or affiliate of a rural
7 fund, including, but not limited to, a holder of a capital
8 investment issued by the rural fund; or

9 (2) Loan to or invest in a rural fund or member or
10 affiliate of a rural fund, including, but not limited to, a
11 holder of a capital investment issued by a rural fund, where
12 the proceeds of such loan or investment are directly or
13 indirectly used to fund or refinance the purchase of a
14 capital investment under sections 620.3500 to 620.3530.

620.3530. 1. Rural funds shall submit a report to the
2 department within the first fifteen business days after the
3 second and third credit allowance date. The report
4 following the second credit allowance date shall provide
5 documentation as to the investment of sixty percent of the

6 purchase price of such capital investment in qualified
7 investments. The report following the third credit
8 allowance date shall provide documentation as to the
9 investment of one hundred percent of the purchase price of
10 such capital investment in qualified investments. For all
11 subsequent years, rural funds shall submit an annual report
12 to the department within ninety days of the beginning of the
13 calendar year during the compliance period. Unless
14 previously reported pursuant to this subsection, such
15 reports shall also include:

16 (1) The name and location of each eligible business
17 receiving a qualified investment;

18 (2) Bank statements of such rural fund evidencing each
19 qualified investment;

20 (3) A copy of the written opinion of the department,
21 as provided in subsection 3 of section 620.3515, or evidence
22 that such business was an eligible business at the time of
23 such qualified investment, as applicable;

24 (4) The total number of new jobs, maintained jobs, new
25 payroll, maintained payroll, new revenue, and maintained
26 revenue by each eligible business receiving a qualified
27 investment from a rural fund; and

28 (5) Such other information as required by the
29 department.

30 2. The program authorized pursuant to sections
31 620.3500 to 620.3530 shall be considered a business
32 recruitment tax credit under subdivision (4) of subsection 2
33 of section 135.800, and any rural fund approved under this
34 program shall be subject to the provisions of sections
35 135.800 to 135.830.

36 3. On or after the sixth anniversary of the initial
37 credit allowance date, a rural fund may apply to the
38 department to exit the program and no longer be subject to

39 regulation under the provisions of sections 620.3500 to
40 620.3530. Such request shall be on a form developed by the
41 department to be completed by the rural fund. The
42 department shall respond to the exit application within
43 thirty days of receipt of the completed form. In evaluating
44 the exit application, the fact that no credits have been
45 recaptured and that the rural fund has not received a notice
46 of recapture that has not been cured pursuant to subsection
47 4 of section 620.3520 shall be sufficient evidence to prove
48 that the rural fund is eligible for exit. The department
49 shall not unreasonably deny, delay, or withhold its
50 determination of an exit application submitted under this
51 subsection. If the exit application is denied, the notice
52 shall include the reasons for such determination.

53 4. Upon exit from the program in accordance with
54 subsection 3 of this section, in the event the state sharing
55 ratio is less than one, the state shall receive a share of
56 distributions made with respect to the capital investment
57 raised by the rural fund equal to one minus the state
58 sharing ratio multiplied by the amount of tax credits earned
59 by the rural investor of such rural fund, provided the rural
60 fund may make distributions to make payments on the leverage
61 source in an amount not to exceed principal and interest
62 owed on the leverage source. The maximum amount of
63 distributions the state shall be entitled to receive shall
64 not exceed an amount equal to ten percent of the tax credits
65 earned by such rural investor and the state shall receive no
66 distributions if the state sharing ratio exceeds one.

67 5. Pursuant to section 23.253 of the Missouri sunset
68 act:

69 (1) The program authorized under sections 620.3500 to
70 620.3530 shall expire on August 28, 2029, unless
71 reauthorized by the general assembly; and

72 (2) Sections 620.3500 to 620.3530 shall terminate on
73 September first of the calendar year immediately following
74 the calendar year in which the program authorized under
75 sections 620.3500 to 620.3530 is sunset; and

76 (3) If such program is reauthorized, the program
77 authorized under sections 620.3500 to 620.3530 shall
78 automatically sunset six years after the effective date of
79 the reauthorization of sections 620.3500 to 620.3530; and

80 (4) Nothing in this subsection shall preclude a rural
81 fund that has received certified capital investment
82 authority from the department prior to the expiration of
83 sections 620.3500 to 620.3530 from issuing the capital
84 investment pursuant to that authority in accordance with
85 sections 620.3500 to 620.3530.

86 6. The department may adopt such rules, statements of
87 policy, procedures, forms, and guidelines as may be
88 necessary to carry out the provisions of sections 620.3500
89 to 620.3530. Any rule or portion of a rule, as that term is
90 defined in section 536.010, that is created under the
91 authority delegated in this section shall become effective
92 only if it complies with and is subject to all of the
93 provisions of chapter 536 and, if applicable, section
94 536.028. This section and chapter 536 are nonseverable and
95 if any of the powers vested with the general assembly
96 pursuant to chapter 536 to review, to delay the effective
97 date, or to disapprove and annul a rule are subsequently
98 held unconstitutional, then the grant of rulemaking
99 authority and any rule proposed or adopted after August 28,
100 2023, shall be invalid and void.