

SECOND REGULAR SESSION

SENATE BILL NO. 718

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Pre-filed December 23, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

4092S.011

AN ACT

To repeal section 100.286, RSMo, and to enact in lieu thereof one new section relating to Missouri development finance board infrastructure development fund tax credits.

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

Section A. Section 100.286, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 100.286, to read as follows:

100.286. 1. Within the discretion of the board, the development and
2 reserve fund, the infrastructure development fund or the export finance fund may
3 be pledged to secure the payment of any bonds or notes issued by the board, or
4 to secure the payment of any loan made by the board or a participating lender
5 which loan:

6 (1) Is requested to finance any project or export trade activity;

7 (2) Is requested by a borrower who is demonstrated to be financially
8 responsible;

9 (3) Can reasonably be expected to provide a benefit to the economy of this
10 state;

11 (4) Is otherwise secured by a mortgage or deed of trust on real or personal
12 property or other security satisfactory to the board; provided that loans to finance
13 export trade activities may be secured by export accounts receivable or
14 inventories of exportable goods satisfactory to the board;

15 (5) Does not exceed five million dollars;

16 (6) Does not have a term longer than five years if such loan is made to
17 finance export trade activities; and

18 (7) Is, when used to finance export trade activities, made to small or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 medium size businesses or agricultural businesses, as may be defined by the
20 board.

21 2. The board shall prescribe standards for the evaluation of the financial
22 condition, business history, and qualifications of each borrower and the terms and
23 conditions of loans which may be secured, and may require each application to
24 include a financial report and evaluation by an independent certified public
25 accounting firm, in addition to such examination and evaluation as may be
26 conducted by any participating lender.

27 3. Each application for a loan secured by the development and reserve
28 fund, the infrastructure development fund or the export finance fund shall be
29 reviewed in the first instance by any participating lender to whom the application
30 was submitted. If satisfied that the standards prescribed by the board are met
31 and that the loan is otherwise eligible to be secured by the development and
32 reserve fund, the infrastructure development fund or the export finance fund, the
33 participating lender shall certify the same and forward the application for final
34 approval to the board.

35 4. The securing of any loans by the development and reserve fund, the
36 infrastructure development fund or the export finance fund shall be conditioned
37 upon approval of the application by the board, and receipt of an annual reserve
38 participation fee, as prescribed by the board, submitted by or on behalf of the
39 borrower.

40 5. The securing of any loan by the export finance fund for export trade
41 activities shall be conditioned upon the board's compliance with any applicable
42 treaties and international agreements, such as the general agreement on tariffs
43 and trade and the subsidies code, to which the United States is then a party.

44 6. Any taxpayer, including any charitable organization that is exempt
45 from federal income tax and whose Missouri unrelated business taxable income,
46 if any, would be subject to the state income tax imposed under chapter 143,
47 RSMo, may, subject to the limitations provided under subsection 8 of this section,
48 receive a tax credit against any tax otherwise due under the provisions of chapter
49 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.261,
50 RSMo, chapter 147, RSMo, or chapter 148, RSMo, in the amount of fifty percent
51 of any amount contributed in money or property by the taxpayer to the
52 development and reserve fund, the infrastructure development fund or the export
53 finance fund during the taxpayer's tax year, provided, however, the total tax
54 credits awarded in any calendar year beginning after January 1, 1994, shall not

55 be the greater of ten million dollars or five percent of the average growth in
56 general revenue receipts in the preceding three fiscal years. This limit may be
57 exceeded only upon joint agreement by the commissioner of administration, the
58 director of the department of economic development, and the director of the
59 department of revenue that such action is essential to ensure retention or
60 attraction of investment in Missouri. If the board receives, as a contribution, real
61 property, the contributor at such contributor's own expense shall have two
62 independent appraisals conducted by appraisers certified by the Master Appraisal
63 Institute. Both appraisals shall be submitted to the board, and the tax credit
64 certified by the board to the contributor shall be based upon the value of the
65 lower of the two appraisals. The board shall not certify the tax credit until the
66 property is deeded to the board. Such credit shall not apply to reserve
67 participation fees paid by borrowers under sections 100.250 to 100.297. The
68 portion of earned tax credits which exceeds the taxpayer's tax liability may be
69 carried forward for up to five years.

70 7. Notwithstanding any provision of law to the contrary, any taxpayer
71 may sell, assign, exchange, convey or otherwise transfer tax credits allowed in
72 subsection 6 of this section under the terms and conditions prescribed in
73 subdivisions (1) and (2) of this subsection. Such taxpayer, hereinafter the
74 assignor for the purpose of this subsection, may sell, assign, exchange or
75 otherwise transfer earned tax credits:

76 (1) For no less than seventy-five percent of the par value of such credits;
77 and

78 (2) In an amount not to exceed one hundred percent of annual earned
79 credits. The taxpayer acquiring earned credits, hereinafter the assignee for the
80 purpose of this subsection, may use the acquired credits to offset up to one
81 hundred percent of the tax liabilities otherwise imposed by chapter 143, RSMo,
82 excluding withholding tax imposed by sections 143.191 to 143.261, RSMo, chapter
83 147, RSMo, or chapter 148, RSMo. Unused credits in the hands of the assignee
84 may be carried forward for up to five years, provided all such credits shall be
85 claimed within ten years following the tax years in which the contribution was
86 made. The assignor shall enter into a written agreement with the assignee
87 establishing the terms and conditions of the agreement and shall perfect such
88 transfer by notifying the board in writing within thirty calendar days following
89 the effective day of the transfer and shall provide any information as may be
90 required by the board to administer and carry out the provisions of this

91 section. Notwithstanding any other provision of law to the contrary, the amount
92 received by the assignor of such tax credit shall be taxable as income of the
93 assignor, and the excess of the par value of such credit over the amount paid by
94 the assignee for such credit shall be taxable as income of the assignee.

95 8. Provisions of subsections 1 to 7 of this section to the contrary
96 notwithstanding, no more than ten million dollars in tax credits provided under
97 this section, may be authorized or approved annually **prior to June 30, 2011.**
98 **No tax credits shall be authorized or approved under the provisions of**
99 **this section after June 30, 2011, unless an allocation is made pursuant**
100 **to the provisions of subsection 9 of this section. In any fiscal year for**
101 **which an allocation is made pursuant to the provisions of subsection 9**
102 **of this section, no more than the amount of tax credits so allocated**
103 **shall be authorized or approved.** [The limitation on tax credit authorization
104 and approval provided under this subsection may be exceeded only upon mutual
105 agreement, evidenced by a signed and properly notarized letter, by the
106 commissioner of the office of administration, the director of the department of
107 economic development, and the director of the department of revenue that such
108 action is essential to ensure retention or attraction of investment in Missouri
109 provided, however, that in no case shall more than twenty-five million dollars in
110 tax credits be authorized or approved during such year.] Taxpayers shall file,
111 with the board, an application for tax credits authorized under this section on a
112 form provided by the board. **In the event the amount of claims exceed the**
113 **amount of tax credits available under the provisions of this subsection,**
114 **the board shall award the credits on a first-to-file, first-to-receive**
115 **basis.** The provisions of this subsection shall not be construed to limit or in any
116 way impair the ability of the board to authorize tax credits for issuance for
117 projects authorized or approved, by a vote of the board, on or before the thirtieth
118 day following the effective date of this act, or a taxpayer's ability to redeem such
119 tax credits.

120 9. **No later than October 1, 2010, and the first day of October**
121 **each year thereafter, the Missouri development finance board shall**
122 **provide to the budget committee of the house of representatives and**
123 **the appropriations committee of the senate a request for an allocation**
124 **for the tax credit provided under the provisions of this**
125 **section. Allocations made pursuant to the provisions of this subsection**
126 **shall provide the amount of tax credits which may be authorized during**

127 the fiscal year immediately following the fiscal year in which such
128 allocation is made. Other provisions of law to the contrary
129 notwithstanding, allocations for tax credits made pursuant to the
130 provisions of this subsection may exceed annual limitations on tax
131 credit authorization provided by law. In the case of allocations for
132 authorizations of tax credits for programs under which such credits
133 may be issued over a period of fiscal years for a single project or
134 projects, such allocation shall be made for the total amount of tax
135 credits to be issued in the aggregate over the entire term of fiscal
136 years, and the subsequent issuance of tax credits so authorized shall
137 not be taken into account in subsequent fiscal years for purposes of
138 determining compliance with statutory limitations on tax credit
139 authorization. For purposes of this subsection, "streaming credit
140 issuance" shall mean any instance where an administering agency is
141 allowed, by law, to issue tax credits over a period of years to a
142 recipient for a single project or series of projects. The allocations
143 provided under this subsection shall only be made in the annual
144 appropriation bill relating to public debt and shall specify:

- 145 (1) The program under which such tax credits may be
146 authorized;
- 147 (2) The fiscal year allocation being made;
- 148 (3) The administering agency for such program; and
- 149 (4) Whether the amount authorized is for streaming credit
150 issuance and the amount so designated.

151 Allocations for any tax credit program which remain unauthorized at
152 the end of the fiscal year shall expire on the thirtieth day of June of
153 such fiscal year. The provisions of this subsection shall not be
154 construed to limit or in any way impair a recipient's ability to redeem
155 tax credits or an administering agency's ability to issue tax credits
156 authorized prior to July 1, 2011.

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