

SECOND REGULAR SESSION

SENATE BILL NO. 765

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHOEMYER.

Read 1st time January 13, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

3558S.011

AN ACT

To repeal section 99.1205, RSMo, and to enact in lieu thereof three new sections relating to a tax credit for equity investments in qualified Missouri businesses.

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

Section A. Section 99.1205, RSMo, is repealed and three new sections
2 enacted in lieu thereof, to be known as sections 99.1205, 348.545, and 348.548,
3 to read as follows:

99.1205. 1. This section shall be known and may be cited as the
2 "Distressed Areas Land Assemblage Tax Credit Act".

3 2. As used in this section, the following terms mean:

4 (1) "Acquisition costs", the purchase price for the eligible parcel, costs of
5 environmental assessments, closing costs, real estate brokerage fees, reasonable
6 demolition costs of vacant structures, and reasonable maintenance costs incurred
7 to maintain an acquired eligible parcel for a period of five years after the
8 acquisition of such eligible parcel. Acquisition costs shall not include costs for
9 title insurance and survey, attorney's fees, relocation costs, fines, or bills from a
10 municipality;

11 (2) "Applicant", any person, firm, partnership, trust, limited liability
12 company, or corporation which has:

13 (a) Incurred, within an eligible project area, acquisition costs for the
14 acquisition of land sufficient to satisfy the requirements under subdivision (8) of
15 this subsection; and

16 (b) Been appointed or selected, pursuant to a redevelopment agreement
17 by a municipal authority, as a redeveloper or similar designation, under an
18 economic incentive law, to redevelop an urban renewal area or a redevelopment
19 area that includes all of an eligible project area or whose redevelopment plan or

20 redevelopment area, which encompasses all of an eligible project area, has been
21 approved or adopted under an economic incentive law. In addition to being
22 designated the redeveloper, the applicant shall have been designated to receive
23 economic incentives only after the municipal authority has considered the amount
24 of the tax credits in adopting such economic incentives as provided in subsection
25 8 of this section. The redevelopment agreement shall provide that:

26 a. The funds generated through the use or sale of the tax credits issued
27 under this section shall be used to redevelop the eligible project area;

28 b. No more than seventy-five percent of the urban renewal area identified
29 in the urban renewal plan or the redevelopment area identified in the
30 redevelopment plan may be redeveloped by the applicant; and

31 c. The remainder of the urban renewal area or the redevelopment area
32 shall be redeveloped by co-redevelopers or redevelopers to whom the applicant
33 has assigned its redevelopment rights and obligations under the urban renewal
34 plan or the redevelopment plan;

35 (3) "Certificate", a tax credit certificate issued under this section;

36 (4) "Condemnation proceedings", any action taken by, or on behalf of, an
37 applicant to initiate an action in a court of competent jurisdiction to use the
38 power of eminent domain to acquire a parcel within the eligible project
39 area. Condemnation proceedings shall include any and all actions taken after the
40 submission of a notice of intended acquisition to an owner of a parcel within the
41 eligible project area by a municipal authority or any other person or entity under
42 section 523.250, RSMo;

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

44 (6) "Economic incentive laws", any provision of Missouri law pursuant to
45 which economic incentives are provided to redevelopers of a parcel or parcels to
46 redevelop the land, such as tax abatement or payments in lieu of taxes, or
47 redevelopment plans or redevelopment projects approved or adopted which
48 include the use of economic incentives to redevelop the land. Economic incentive
49 laws include, but are not limited to, the land clearance for redevelopment
50 authority law under sections 99.300 to 99.660, the real property tax increment
51 allocation redevelopment act under sections 99.800 to 99.865, the Missouri
52 downtown and rural economic stimulus act under sections 99.915 to 99.1060, and
53 the downtown revitalization preservation program under sections 99.1080 to
54 99.1092;

55 (7) "Eligible parcel", a parcel:

- 56 (a) Which is located within an eligible project area;
- 57 (b) Which is to be redeveloped;
- 58 (c) On which the applicant has not commenced construction prior to
59 November 28, 2007;
- 60 (d) Which has been acquired without the commencement of any
61 condemnation proceedings with respect to such parcel brought by or on behalf of
62 the applicant. Any parcel acquired by the applicant from a municipal authority
63 shall not constitute an eligible parcel; and
- 64 (e) On which all outstanding taxes, fines, and bills levied by municipal
65 governments that were levied by the municipality during the time period that the
66 applicant held title to the eligible parcel have been paid in full;
- 67 (8) "Eligible project area", an area which shall have satisfied the following
68 requirements:
- 69 (a) The eligible project area shall consist of at least seventy-five acres and
70 may include parcels within its boundaries that do not constitute an eligible
71 parcel;
- 72 (b) At least eighty percent of the eligible project area shall be located
73 within a Missouri qualified census tract area, as designated by the United States
74 Department of Housing and Urban Development under 26 U.S.C. Section 42, or
75 within a distressed community as that term is defined in section 135.530, RSMo;
- 76 (c) The eligible parcels acquired by the applicant within the eligible
77 project area shall total at least fifty acres, which may consist of contiguous and
78 noncontiguous parcels;
- 79 (d) The average number of parcels per acre in an eligible project area
80 shall be four or more;
- 81 (e) Less than five percent of the acreage within the boundaries of the
82 eligible project area shall consist of owner-occupied residences which the
83 applicant has identified for acquisition under the urban renewal plan or the
84 redevelopment plan pursuant to which the applicant was appointed or selected
85 as the redeveloper or by which the person or entity was qualified as an applicant
86 under this section on the date of the approval or adoption of such plan;
- 87 (9) "Interest costs", interest, loan fees, and closing costs. Interest costs
88 shall not include attorney's fees;
- 89 (10) "Maintenance costs", costs of boarding up and securing vacant
90 structures, costs of removing trash, and costs of cutting grass and weeds;
- 91 (11) "Municipal authority", any city, town, village, county, public body

92 corporate and politic, political subdivision, or land trust of this state established
93 and authorized to own land within the state;

94 (12) "Municipality", any city, town, village, or county;

95 (13) "Parcel", a single lot or tract of land, and the improvements thereon,
96 owned by, or recorded as the property of, one or more persons or entities;

97 (14) "Redeveloped", the process of undertaking and carrying out a
98 redevelopment plan or urban renewal plan pursuant to which the conditions
99 which provided the basis for an eligible project area to be included in a
100 redevelopment plan or urban renewal plan are to be reduced or eliminated by
101 redevelopment or rehabilitation; and

102 (15) "Redevelopment agreement", the redevelopment agreement or similar
103 agreement into which the applicant entered with a municipal authority and which
104 is the agreement for the implementation of the urban renewal plan or
105 redevelopment plan pursuant to which the applicant was appointed or selected
106 as the redeveloper or by which the person or entity was qualified as an applicant
107 under this section; and such appointment or selection shall have been approved
108 by an ordinance of the governing body of the municipality, or municipalities, or
109 in the case of any city not within a county, the board of aldermen, in which the
110 eligible project area is located. The redevelopment agreement shall include a
111 time line for redevelopment of the eligible project area. The redevelopment
112 agreement shall state that the named developer shall be subject to the provisions
113 of chapter 290, RSMo.

114 3. Any applicant shall be entitled to a tax credit against the taxes
115 imposed under chapters 143, 147, and 148, RSMo, except for sections 143.191 to
116 143.265, RSMo, in an amount equal to fifty percent of the acquisition costs, and
117 one hundred percent of the interest costs incurred for a period of five years after
118 the acquisition of an eligible parcel. No tax credits shall be issued under this
119 section until after January 1, 2008.

120 4. If the amount of such tax credit exceeds the total tax liability for the
121 year in which the applicant is entitled to receive a tax credit, the amount that
122 exceeds the state tax liability may be carried forward for credit against the taxes
123 imposed under chapters 143, 147, and 148, RSMo, for the succeeding six years,
124 or until the full credit is used, whichever occurs first. The applicant shall not be
125 entitled to a tax credit for taxes imposed under sections 143.191 to 143.265,
126 RSMo. Applicants entitled to receive such tax credits may transfer, sell, or assign
127 the tax credits. Tax credits granted to a partnership, a limited liability company

128 taxed as a partnership, or multiple owners of property shall be passed through
129 to the partners, members, or owners respectively pro rata or pursuant to an
130 executed agreement among the partners, members, or owners documenting an
131 alternate distribution method.

132 5. A purchaser, transferee, or assignee of the tax credits authorized under
133 this section may use acquired tax credits to offset up to one hundred percent of
134 the tax liabilities otherwise imposed under chapters 143, 147, and 148, RSMo,
135 except for sections 143.191 to 143.265, RSMo. A seller, transferor, or assignor
136 shall perfect such transfer by notifying the department in writing within thirty
137 calendar days following the effective date of the transfer and shall provide any
138 information as may be required by the department to administer and carry out
139 the provisions of this section.

140 6. To claim tax credits authorized under this section, an applicant shall
141 submit to the department an application for a certificate. An applicant shall
142 identify the boundaries of the eligible project area in the application. The
143 department shall verify that the applicant has submitted a valid application in
144 the form and format required by the department. The department shall verify
145 that the municipal authority held the requisite hearings and gave the requisite
146 notices for such hearings in accordance with the applicable economic incentive
147 act, and municipal ordinances. On an annual basis, an applicant may file for the
148 tax credit for the acquisition costs, and for the tax credit for the interest costs,
149 subject to the limitations of this section. If an applicant applying for the tax
150 credit meets the criteria required under this section, the department shall issue
151 a certificate in the appropriate amount. If an applicant receives a tax credit for
152 maintenance costs as a part of the applicant's acquisition costs, the department
153 shall post on its Internet web site the amount and type of maintenance costs and
154 a description of the redevelopment project for which the applicant received a tax
155 credit within thirty days after the department issues the certificate to the
156 applicant.

157 7. The total aggregate amount of tax credits authorized under this section
158 shall not exceed ninety-five million dollars. At no time shall the annual amount
159 of the tax credits issued under this section exceed twenty million dollars. If the
160 tax credits that are to be issued under this section exceed, in any year, the twenty
161 million dollar limitation, the department shall either:

162 (1) Issue tax credits to the applicant in the amount of twenty million
163 dollars, if there is only one applicant entitled to receive tax credits in that year;

164 or

165 (2) Issue the tax credits on a pro rata basis to all applicants entitled to
166 receive tax credits in that year. Any amount of tax credits, which an applicant
167 is, or applicants are, entitled to receive on an annual basis and are not issued due
168 to the twenty million dollar limitation, shall be carried forward for the benefit of
169 the applicant or applicants to subsequent years. No tax credits provided under
170 this section shall be authorized after August 28, 2013. Any tax credits which
171 have been authorized on or before August 28, 2013, but not issued, may be issued,
172 subject to the limitations provided under this subsection, until all such
173 authorized tax credits have been issued. **In any year where the department**
174 **fails to authorize more than eight million dollars in tax credits under**
175 **this section, the first two million dollars of tax credits remaining**
176 **unauthorized shall be made available for issuance under the provisions**
177 **of section 348.545.**

178 8. Upon issuance of any tax credits pursuant to this section, the
179 department shall report to the municipal authority the applicant's name and
180 address, the parcel numbers of the eligible parcels for which the tax credits were
181 issued, the itemized acquisition costs and interest costs for which tax credits were
182 issued, and the total value of the tax credits issued. The municipal authority and
183 the state shall not consider the amount of the tax credits as an applicant's cost,
184 but shall include the tax credits in any sources and uses and cost benefit analysis
185 reviewed or created for the purpose of awarding other economic incentives. The
186 amount of the tax credits shall not be considered an applicant's cost in the
187 evaluation of the amount of any award of any other economic incentives, but shall
188 be considered in measuring the reasonableness of the rate of return to the
189 applicant with respect to such award of other economic incentives. The municipal
190 authority shall provide the report to any relevant commission, board, or entity
191 responsible for the evaluation and recommendation or approval of other economic
192 incentives to assist in the redevelopment of the eligible project area. Tax credits
193 authorized under this section shall constitute redevelopment tax credits, as such
194 term is defined under section 135.800 RSMo, and shall be subject to all provisions
195 applicable to redevelopment tax credits provided under sections 135.800 to
196 135.830 RSMo.

197 9. The department may promulgate rules to implement the provisions of
198 this section. Any rule or portion of a rule, as that term is defined in section
199 536.010, RSMo, that is created under the authority delegated in this section shall

200 become effective only if it complies with and is subject to all of the provisions of
201 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and
202 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
203 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
204 date, or to disapprove and annul a rule are subsequently held unconstitutional,
205 then the grant of rulemaking authority and any rule proposed or adopted after
206 August 28, 2007, shall be invalid and void.

348.545. As used in sections 348.545 and 348.548, the following
2 terms shall mean:

3 (1) "Department", the Missouri department of economic
4 development;

5 (2) "Distressed community", as defined in section 135.530;

6 (3) "Equity investment", money or money equivalent in
7 consideration for qualified securities. An equity investment shall be
8 deemed to have been made on the date of acquisition of the qualified
9 security, as such date is determined in accordance with the provisions
10 of the Internal Revenue Code;

11 (4) "Investor":

12 (a) An individual who is an accredited investor, as defined in 17
13 CFR 230.501(a) as in effect on August 28, 2009; or

14 (b) Any partnership, corporation, trust, limited liability
15 company, or not-for-profit entity that was established and is operated
16 for the purpose of making preseed and seed stage investments in
17 start-up companies, and is approved by the department;

18 (5) "Qualified Missouri business", a manufacturing business, in
19 need of venture capital, which will base operations in an existing
20 facility located in a distressed community in this state. Such business
21 shall be involved in commerce for the purpose of manufacturing,
22 processing, or assembling products, conducting research and
23 development, or providing services in interstate commerce but
24 excluding retail, real estate, real estate development, insurance, and
25 professional services provided by accountants, lawyers, or
26 physicians. Such business shall create no less than twenty net new
27 jobs; offer health insurance to all full-time employees; pay no less than
28 half of such premiums; and be approved by the department as a
29 qualified Missouri business as provided under section 348.548;

30 (6) "Qualified securities", securities that are not redeemable or

31 repayable within seven years of issuance and that have been approved
32 in form and substance by the department. Forms of such equity
33 securities include:

34 (a) A general or limited partnership interest;

35 (b) Common stock;

36 (c) Preferred stock, with or without voting rights, without regard
37 to seniority position, and whether or not convertible into common
38 stock; or

39 (d) Convertible debt;

40 (7) "Rural area", any city, town, or village with fewer than fifteen
41 thousand inhabitants and located in any county that is not part of a
42 standard metropolitan statistical area as defined by the United States
43 Department of Commerce or its successor agency. However, any such
44 city, town, or village located in any county so defined as a standard
45 metropolitan statistical area may be designated a rural area by the
46 office of rural development if:

47 (a) A substantial number of persons in such county derive their
48 income from agriculture;

49 (b) The county has only one city within the county having a
50 population of more than fifteen thousand and is classified as a standard
51 metropolitan statistical area; and

52 (c) All other cities, towns, and villages in that county have a
53 population of less than fifteen thousand;

54 (8) "State tax liability", in the case of a business taxpayer, any
55 liability incurred by such taxpayer pursuant to the provisions of
56 chapters 143, 147, 148, and 153, excluding sections 143.191 to 143.265,
57 and related provisions, and in the case of an individual taxpayer, any
58 liability incurred by such taxpayer pursuant to the provisions of
59 chapter 143, excluding sections 143.191 to 143.265, and related
60 provisions.

348.548. 1. The department may authorize tax credits to
2 encourage equity investment into early stage Missouri manufacturing
3 companies.

4 2. If a qualified Missouri business is approved by the
5 department, the investors make equity investments in the qualified
6 Missouri business may be issued a tax credit in the year the equity
7 investment is made. The tax credit shall be a credit against an

8 investor's state tax liability in an amount equal to fifty percent of such
9 investors' equity investment in any qualified Missouri business, subject
10 to the limitations set forth in subsection 5 of this section.

11 3. (1) Before an investor may be entitled to receive tax credits,
12 as authorized by this section, such investor shall have made an equity
13 investment in a qualified security of a qualified Missouri
14 business. This business shall have been approved by the department
15 as a qualified Missouri business prior to the date on which the cash
16 investment was made. To be designated as a qualified Missouri
17 business, a business shall make application to the department in
18 accordance with the provisions of this section. Such application shall
19 be in form and substance as required by the department but shall
20 include at least the following:

21 (a) The name of the business and certified copies of the
22 organizational documents of the business;

23 (b) A business plan, including a description of the business and
24 the management, product, market, and financial plan of the business;

25 (c) A statement of the business' product or service;

26 (d) A statement of the potential economic impact of the
27 enterprise including the number, location, and types of jobs expected
28 to be created;

29 (e) A description of the qualified securities to be issued, the
30 consideration to be paid for the qualified securities, the amount of any
31 tax credits requested, and the earliest year in which the tax credits
32 may be redeemed;

33 (f) A statement of the amount, timing, and projected use of the
34 proceeds to be raised from the proposed sale of qualified securities;
35 and

36 (g) Other information as the department may request, such as
37 the names, addresses, and taxpayer identification numbers of all
38 investors who may qualify for the tax credit. Such list of investors who
39 may qualify for the tax credits shall be amended as new qualified
40 securities are sold or as any information on the list changes.

41 (2) No business shall be designated as a qualified Missouri
42 business unless such business meets all of the following criteria:

43 (a) The business shall not have had annual gross revenues of
44 more than three million dollars in the most recent tax year of the

45 **business;**

46 **(b) The business shall not have ownership interests including,**
47 **but not limited to, common or preferred shares of stock that can be**
48 **traded by the public via a stock exchange, electronic exchange, bulletin**
49 **board, or other public market place on or before the date that a**
50 **qualifying investment is made;**

51 **(c) The business shall not be engaged primarily in any one or**
52 **more of the following enterprises:**

53 **a. The business of banking, savings and loan or lending**
54 **institutions, credit or finance, or financial brokerage or investments;**

55 **b. Professional services, such as legal, accounting or engineering**
56 **services;**

57 **c. Governmental, charitable, religious or trade organizations;**

58 **d. The ownership, development, brokerage, sales, or leasing of**
59 **real estate;**

60 **e. Insurance;**

61 **f. Construction or construction management or contracting;**

62 **g. Business consulting or brokerage;**

63 **h. Any business engaged primarily as a passive business, having**
64 **irregular or noncontinuous operations, or deriving substantially all of**
65 **the income of the business from passive investments that generate**
66 **interest, dividends, royalties, or capital gains, or any business**
67 **arrangements the effect of which is to immunize an investor from risk**
68 **of loss;**

69 **i. Any Missouri certified capital formation company;**

70 **j. Any activity that is in violation of the law; and**

71 **k. Any business raising money primarily to purchase real estate,**
72 **land, or fixtures;**

73 **(d) The business shall satisfy all other requirements of this**
74 **section.**

75 **(3) The portions of documents and other materials submitted to**
76 **the department that contain trade secrets shall be kept confidential**
77 **and shall be maintained in a secured environment by the director of**
78 **the department. For the purposes of this section, such portions of**
79 **documents and other materials shall mean any customer list, any**
80 **formula, compound, production data, or compilation of information**
81 **certain individuals within a commercial concern using such portions**

82 of documents and other material means to fabricate, produce, or
83 compound an article of trade, or, any service having commercial value,
84 which gives the user an opportunity to obtain a business advantage
85 over competitors who do not know or use such service.

86 (4) A qualified Missouri business shall have the burden of proof
87 to demonstrate to the department the qualifications of the business
88 under this section and shall have the obligation to notify the
89 department in a timely manner of any changes in the qualifications of
90 the business or in the eligibility of investors to claim a tax credit for
91 cash investment in a qualified security.

92 4. The designation of a business as a qualified Missouri business
93 shall be made by the department, and such designation shall be
94 renewed annually. A business shall be so designated if the department
95 determines, based upon the application submitted by the business and
96 any additional investigation the staff of the department shall make,
97 that the following criteria have been or shall be satisfied:

98 (1) The business has a reasonable chance of success;

99 (2) The ability of investors in the business to receive tax credits
100 for cash investments in qualified securities of the business is necessary
101 because funding otherwise available for the business is not available
102 on commercially reasonable terms;

103 (3) The business has the reasonable potential to create
104 measurable employment within the state;

105 (4) The existing owners of the business and other founders have
106 made or are committed to make a substantial financial and time
107 commitment to the business;

108 (5) The securities to be issued and purchased are qualified
109 securities; and

110 (6) Binding commitments have been made by the business to the
111 department for adequate reporting of financial data, including a
112 requirement for an annual report, or, if required by the department, an
113 annual audit of the financial and operational records of the business,
114 the right of access to the financial records of the business, and the
115 right of the department to record and publish normal and customary
116 data and information related to the issuance of tax credits that are not
117 otherwise determined to be trade or business secrets;

118 5. To the extent sufficient tax credits remain unauthorized under

119 the provisions of section 99.1205, RSMo, no more than two million
120 dollars in tax credits authorized under this section shall be issued
121 annually. No more than one million five hundred thousand dollars in
122 tax credits shall be issued annually for investments made to any one
123 qualified Missouri business. If in any year, the number of claims for
124 tax credits authorized under this section exceed the amount available
125 under this subsection, the department shall issue the tax credits on a
126 pro rata basis to all applicants entitled to receive tax credits in that
127 year. Any amount of tax credits which an applicant is, or applicants
128 are, entitled to receive on an annual basis and are not issued due to the
129 limitations provided under this subsection, shall be carried forward for
130 the benefit of the applicant or applicants to subsequent years.

131 6. The amount of the tax credit claimed shall not exceed the
132 amount of the investor's state tax liability for the taxable year for
133 which the credit is claimed. However, any tax credit that cannot be
134 claimed in the taxable year the investment was made may be carried
135 over to the next five succeeding taxable years until the full credit has
136 been claimed. Tax credits may be sold, assigned, exchanged, or
137 otherwise transferred.

138 7. A qualified Missouri business for which credits have been
139 issued that, within seven years of such tax credit issuance: relocates
140 its manufacturing facility out of Missouri; fails to comply with the
141 provisions of this section; alters the principal nature of its operations;
142 or divests itself of key assets shall upon demand by the department pay
143 the state of Missouri an amount equal to the amount of credits issued
144 to its investors.

145 8. In addition to reports by the businesses to the department, the
146 department shall also provide in its annual report information on the
147 marketing and use of the investor tax credits. This report shall include
148 the following:

149 (1) The amount of tax credits used in the previous fiscal year
150 including what percentage was claimed by individuals and what
151 percentage was claimed by firms and other entities;

152 (2) The types of businesses that benefited from the tax credits;
153 and

154 (3) Any aggregate job creation or capital investment in Missouri
155 that resulted from the use of the tax credits for a period of five years

156 **beginning from the date on which the tax credits were awarded.**
157 **In addition, the annual report shall provide information regarding**
158 **what businesses deriving a benefit from the tax credits remained in**
159 **Missouri, what businesses ceased business, what businesses were**
160 **purchased, and what businesses may have moved out-of-state and the**
161 **reason for such move.**

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