

SECOND REGULAR SESSION

# SENATE BILL NO. 891

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time February 4, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4575S.02I

## AN ACT

To repeal sections 100.286, 135.352, 135.355, and 215.020, RSMo, and to enact in lieu thereof four new sections relating to certain tax credit programs.

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

Section A. Sections 100.286, 135.352, 135.355, and 215.020, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 100.286, 135.352, 135.355, and 215.020, 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] **subsections**  
48 **8, 9, and 10** of this section, receive a tax credit against any tax otherwise due  
49 under the provisions of chapter 143, RSMo, excluding withholding tax imposed  
50 by sections 143.191 to 143.261, RSMo, chapter 147, RSMo, or chapter 148, RSMo,  
51 in the amount of fifty percent of any amount contributed in money or property by  
52 the taxpayer to the development and reserve fund, the infrastructure development  
53 fund or the export finance fund during the taxpayer's tax year, provided, however,  
54 the total tax credits awarded in any calendar year beginning after January 1,

55 1994, shall not be the greater of ten million dollars or five percent of the average  
56 growth in general revenue receipts in the preceding three fiscal years. This limit  
57 may be exceeded only upon joint agreement by the commissioner of  
58 administration, the director of the department of economic development, and the  
59 director of the department of revenue that such action is essential to ensure  
60 retention or attraction of investment in Missouri. If the board receives, as a  
61 contribution, real property, the contributor at such contributor's own expense  
62 shall have two independent appraisals conducted by appraisers certified by the  
63 Master Appraisal Institute. Both appraisals shall be submitted to the board, and  
64 the tax credit certified by the board to the contributor shall be based upon the  
65 value of the lower of the two appraisals. The board shall not certify the tax credit  
66 until the 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. The limitation on tax  
98 credit authorization and approval provided under this subsection may be exceeded  
99 only upon mutual agreement, evidenced by a signed and properly notarized letter,  
100 by the commissioner of the office of administration, the director of the department  
101 of economic development, and the director of the department of revenue that such  
102 action is essential to ensure retention or attraction of investment in Missouri  
103 provided, however, that in no case shall more than twenty-five million dollars in  
104 tax credits be authorized or approved during such year. Taxpayers shall file,  
105 with the board, an application for tax credits authorized under this section on a  
106 form provided by the board. The provisions of this subsection shall not be  
107 construed to limit or in any way impair the ability of the board to authorize tax  
108 credits for issuance for projects authorized or approved, by a vote of the board,  
109 on or before the thirtieth day following the effective date of this act, or a  
110 taxpayer's ability to redeem such tax credits.

111 **9. For all tax years beginning on or after January 1, 2010, as a**  
112 **precondition to issuance of tax credits under this section, taxpayers,**  
113 **including any charitable organization that is exempt from federal**  
114 **income tax and whose Missouri unrelated business taxable income, if**  
115 **any, would be subject to the state income tax imposed under chapter**  
116 **143, shall, under penalty of perjury, provide the board with a statement**  
117 **that such taxpayer or charitable organization has not contributed to**  
118 **any committee within the two calendar years immediately preceding**  
119 **the date of filing such statement. Taxpayers and charitable**  
120 **organizations which receive tax credits authorized under this section**  
121 **shall be prohibited from making contributions to any committee for two**  
122 **calendar years following the date of filing the statement required under**  
123 **this subsection. Tax credits received under the provisions of this**  
124 **section by any taxpayer or charitable organization which is later found**  
125 **to have contributed to any committee within the two calendar years**  
126 **immediately preceding or following the date of filing the statement**

127 **required under this subsection, shall be subject to recapture and such**  
128 **taxpayer or charitable organization shall repay an amount equal to any**  
129 **such credits which have been redeemed prior to such recapture. For**  
130 **purposes of this subsection, the term "committee" shall have the same**  
131 **meaning as provided under section 130.011, and shall include any**  
132 **committee required to file with the federal election commission.**

133 **10. No taxpayer, or charitable organization that is exempt from**  
134 **federal income tax and whose Missouri unrelated business taxable**  
135 **income, if any, would be subject to the state income tax imposed under**  
136 **chapter 143, shall receive tax credits, authorized under the provisions**  
137 **of this section, if such taxpayer or charitable organization has a**  
138 **business relationship with any member of the board or relative of a**  
139 **member of the board within the second degree of consanguinity or**  
140 **affinity.**

135.352. 1. A taxpayer owning an interest in a qualified Missouri project  
2 shall, subject to the limitations provided under the provisions of subsection 3 of  
3 this section, be allowed a state tax credit, whether or not allowed a federal tax  
4 credit, to be termed the Missouri low-income housing tax credit, if the commission  
5 issues an eligibility statement for that project.

6 2. For qualified Missouri projects placed in service after January 1, 1997,  
7 the Missouri low-income housing tax credit available to a project shall be such  
8 amount as the commission shall determine is necessary to ensure the feasibility  
9 of the project, up to an amount equal to the federal low-income housing tax credit  
10 for a qualified Missouri project, for a federal tax period, and such amount shall  
11 be subtracted from the amount of state tax otherwise due for the same tax period.

12 3. **No taxpayer owning an interest in a qualified Missouri project**  
13 **shall receive a tax credit authorized under the provisions of sections**  
14 **135.350 to 135.363 if such owner has a business relationship with any**  
15 **member of the commission or relative of a member of the commission**  
16 **within the second degree of consanguinity or affinity.**

17 4. No more than six million dollars in tax credits shall be authorized each  
18 fiscal year for projects financed through tax-exempt bond issuance.

19 [4.] 5. The Missouri low-income housing tax credit shall be taken against  
20 the taxes and in the order specified pursuant to section 32.115, RSMo. The credit  
21 authorized by this section shall not be refundable. Any amount of credit that  
22 exceeds the tax due for a taxpayer's taxable year may be carried back to any of

23 the taxpayer's three prior taxable years or carried forward to any of the  
24 taxpayer's five subsequent taxable years.

25 [5.] 6. All or any portion of Missouri tax credits issued in accordance with  
26 the provisions of sections 135.350 to 135.362 may be allocated to parties who are  
27 eligible pursuant to the provisions of subsection 1 of this section. Beginning  
28 January 1, 1995, for qualified projects which began on or after January 1, 1994,  
29 an owner of a qualified Missouri project shall certify to the director the amount  
30 of credit allocated to each taxpayer. The owner of the project shall provide to the  
31 director appropriate information so that the low-income housing tax credit can be  
32 properly allocated.

33 [6.] 7. In the event that recapture of Missouri low-income housing tax  
34 credits is required pursuant to subsection 2 of section 135.355, any statement  
35 submitted to the director as provided in this section shall include the proportion  
36 of the state credit required to be recaptured, the identity of each taxpayer subject  
37 to the recapture and the amount of credit previously allocated to such taxpayer.

38 [7.] 8. The director of the department may promulgate rules and  
39 regulations necessary to administer the provisions of this section. No rule or  
40 portion of a rule promulgated pursuant to the authority of this section shall  
41 become effective unless it has been promulgated pursuant to the provisions of  
42 section 536.024, RSMo.

135.355. 1. The owner of a qualified Missouri project eligible for the  
2 Missouri low-income housing tax credit shall submit, at the time of filing the  
3 owner's return, an eligibility statement. In the case of failure to attach the  
4 eligibility statement, no credit under this section shall be allowed with respect  
5 to such project for that year until these copies are provided to the department of  
6 revenue.

7 2. If under Section 42 of the 1986 Internal Revenue Code, as amended, a  
8 portion of any federal low-income housing credits taken on a low-income project  
9 is required to be recaptured only during the first ten years after a project is  
10 placed in service, the taxpayer claiming state credits with respect to such project  
11 shall also be required to recapture a portion of any state credits authorized by  
12 this section. The state recapture amount shall be equal to the proportion of the  
13 state credit claimed by the taxpayer that equals the proportion the federal  
14 recapture amount bears to the original federal low-income housing credit amount  
15 subject to recapture.

16 3. For all tax years beginning on or after January 1, 2010, as a

17 **precondition to issuance of tax credits authorized under the provisions**  
18 **of sections 135.350 to 135.363, eligibility statements required under**  
19 **subsection 1 of this section shall include a statement, under penalty of**  
20 **perjury, from the owner of a qualified Missouri project that such**  
21 **owner:**

22 **(1) Has not made a contribution to any committee within the two**  
23 **calendar years immediately preceding the date of filing for such**  
24 **eligibility statement; and**

25 **(2) Shall not apply for nor accept any other state tax credit now**  
26 **or hereafter authorized by law, for such qualified project.**

27 **4. Any owner of a qualified Missouri project which receives tax**  
28 **credits authorized under the provisions of sections 135.350 to 135.363**  
29 **shall be prohibited from making contributions to any committee for two**  
30 **calendar years following the date of filing the eligibility statement**  
31 **required under this section. Tax credits received under the provisions**  
32 **of sections 135.350 to 135.363 by an owner of a qualified Missouri**  
33 **project who is later found to have contributed to any committee within**  
34 **the two calendar years immediately preceding or following the date of**  
35 **filing for such eligibility statement or have received other state tax**  
36 **credits for such eligible project, shall be subject to recapture and such**  
37 **owner shall repay an amount equal to any such credits which have**  
38 **been redeemed prior to such recapture. For purposes of this section,**  
39 **the term "committee" shall have the same meaning as provided under**  
40 **section 130.011, and shall include any committee required to file with**  
41 **the federal election commission.**

215.020. 1. There is hereby created and established as a governmental  
2 instrumentality of the state of Missouri the "Missouri Housing Development  
3 Commission" which shall constitute a body corporate and politic.

4 2. The commission shall consist of [the governor, lieutenant governor, the  
5 state treasurer, the state attorney general, and six] **seven** members to be  
6 selected by the governor, with the advice and consent of the senate, **one member**  
7 **to be selected by the speaker of the house of representatives, and one**  
8 **member to be selected by the president pro tem of the senate. [The]**  
9 **Five of the** persons [to be] selected by the governor shall be individuals  
10 knowledgeable in the areas of housing, finance or construction. **One of the**  
11 **persons selected by the governor shall have an educational background**  
12 **or experience in urban planning, and one of the persons selected by the**

13 **governor shall have an educational background and experience in**  
14 **social work.** Not more than [four] **five** of the members appointed [by the  
15 governor] shall be from the same political party. The members of the commission  
16 appointed by the governor shall serve the following terms: Two shall serve two  
17 years, two shall serve three years, and [two] **three** shall serve four years,  
18 respectively. Thereafter, each appointment shall be for a term of four years. **The**  
19 **persons selected by the speaker of the house of representatives and the**  
20 **president pro tem of the senate shall serve a term of four years.** If for  
21 any reason a vacancy occurs, the governor, with the advice and consent of the  
22 senate, shall appoint a new member to fill the unexpired term. Members are  
23 eligible for reappointment. **No member shall be an elected official.**

24 3. [~~Six~~] **Five** members of the commission shall constitute a quorum. No  
25 vacancy in the membership of the commission shall impair the right of a quorum  
26 to exercise all the rights and perform all the duties of the commission. No action  
27 shall be taken by the commission except upon the affirmative vote of at least [six]  
28 **five** of the members of the commission.

29 4. Each member of the commission appointed [by the governor] is entitled  
30 to compensation of fifty dollars per diem plus his **or her** reasonable and  
31 necessary expenses actually incurred in discharging his **or her** duties under  
32 sections 215.010 to 215.250.

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