

SECOND REGULAR SESSION

SENATE BILL NO. 923

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Read 1st time February 25, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

6219S.011

AN ACT

To repeal sections 135.350, 135.352, 253.550, 253.557, and 253.559, RSMo, and to enact in lieu thereof five new sections relating to tax credits.

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

Section A. Sections 135.350, 135.352, 253.550, 253.557, and 253.559, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 135.350, 135.352, 253.550, 253.557, and 253.559, to read as follows:

135.350. As used in [this section] **sections 135.350 to 135.363**, unless the context clearly requires otherwise, the following words and phrases shall mean:

(1) "Commission", the Missouri housing development commission, or its successor agency;

(2) "Director", director of the department of revenue;

(3) "Eligibility statement", a statement authorized and issued by the commission certifying that a given project qualifies for the Missouri low-income housing tax credit. The commission shall promulgate rules establishing criteria upon which the eligibility statements will be issued. The eligibility statement shall specify the amount of the Missouri low-income housing tax credit allowed. The commission shall only authorize the tax credits to qualified projects which begin after June 18, 1991;

(4) "**Federal credit period**", the same meaning as is prescribed the term "**credit period**" under Section 42 of the 1986 Internal Revenue Code, as amended;

(5) "Federal low-income housing tax credit", the federal tax credit as provided in section 42 of the 1986 Internal Revenue Code, as amended;

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

19 [(5)] (6) "Low-income project", a housing project which has restricted
20 rents that do not exceed thirty percent of median income for at least forty percent
21 of its units occupied by persons of families having incomes of sixty percent or less
22 of the median income, or at least twenty percent of the units occupied by persons
23 or families having incomes of fifty percent or less of the median income;

24 [(6)] (7) "Median income", those incomes which are determined by the
25 federal Department of Housing and Urban Development guidelines and adjusted
26 for family size;

27 [(7)] (8) "Qualified Missouri project", a qualified low-income building as
28 that term is defined in section 42 of the 1986 Internal Revenue Code, as
29 amended, which is located in Missouri;

30 [(8)] (9) "Taxpayer", person, firm or corporation subject to the state
31 income tax imposed by the provisions of chapter 143 (except withholding imposed
32 by sections 143.191 to 143.265) or a corporation subject to the annual corporation
33 franchise tax imposed by the provisions of chapter 147, or an insurance company
34 paying an annual tax on its gross premium receipts in this state, or other
35 financial institution paying taxes to the state of Missouri or any political
36 subdivision of this state under the provisions of chapter 148, or an express
37 company which pays an annual tax on its gross receipts in this state.

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] credit period, and such
11 amount shall be subtracted from the amount of state tax otherwise due for the
12 same tax period.

13 3. No more than six million dollars in tax credits shall be authorized each
14 fiscal year **ending on or before June 30, 2014**, for projects financed through
15 tax-exempt bond issuance.

16 4. **For purposes of the limitations provided under this**
17 **subsection, the aggregate amount of tax credits allowed over a federal**

18 **credit period shall be attributed to the fiscal year in which such credits**
19 **are authorized by the commission for a qualified Missouri project. For**
20 **each fiscal year beginning on or after July 1, 2014, there shall be a one**
21 **hundred million dollar cap on tax credit authorizations for projects**
22 **which are not financed through tax exempt bond issuance. For each**
23 **fiscal year beginning on or after July 1, 2014, there shall be a ten**
24 **million dollar cap on tax credit authorizations for projects which are**
25 **financed through tax exempt bond issuance.**

26 **5.** The Missouri low-income housing tax credit shall be taken against the
27 taxes and in the order specified pursuant to section 32.115. The credit authorized
28 by this section shall not be refundable. Any amount of credit that exceeds the tax
29 due for a taxpayer's taxable year may be carried back to any of the taxpayer's
30 three prior taxable years or carried forward to any of the taxpayer's five
31 subsequent taxable years.

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

40 **[6.] 7.** In the event that recapture of Missouri low-income housing tax
41 credits is required pursuant to subsection 2 of section 135.355, any statement
42 submitted to the director as provided in this section shall include the proportion
43 of the state credit required to be recaptured, the identity of each taxpayer subject
44 to the recapture and the amount of credit previously allocated to such taxpayer.

45 **8. A taxpayer that receives state tax credits under the provisions**
46 **of sections 253.545 to 253.559 shall be ineligible to receive state tax**
47 **credits under the provisions of sections 135.350 to 135.363 for the same**
48 **project, if such project is not financed through tax exempt bond**
49 **issuance.**

50 **[7.] 9.** The director of the department may promulgate rules and
51 regulations necessary to administer the provisions of this section. No rule or
52 portion of a rule promulgated pursuant to the authority of this section shall
53 become effective unless it has been promulgated pursuant to the provisions of

54 section 536.024.

253.550. 1. Any taxpayer incurring costs and expenses for the
2 rehabilitation of eligible property, which is a certified historic structure or
3 structure in a certified historic district, may, subject to the provisions of this
4 section and section 253.559, receive a credit against the taxes imposed pursuant
5 to chapters 143 and 148, except for sections 143.191 to 143.265, on such taxpayer
6 in an amount equal to twenty-five percent of the total costs and expenses of
7 rehabilitation incurred after January 1, 1998, which shall include, but not be
8 limited to, qualified rehabilitation expenditures as defined under section
9 47(c)(2)(A) of the Internal Revenue Code of 1986, as amended, and the related
10 regulations thereunder, provided the rehabilitation costs associated with
11 rehabilitation and the expenses exceed fifty percent of the total basis in the
12 property and the rehabilitation meets standards consistent with the standards
13 of the Secretary of the United States Department of the Interior for rehabilitation
14 as determined by the state historic preservation officer of the Missouri
15 department of natural resources.

16 2. During the period beginning on January 1, 2010, but ending on or after
17 June 30, 2010, the department of economic development shall not approve
18 applications for tax credits under the provisions of subsections 3 and 8 of section
19 253.559 which, in the aggregate, exceed seventy million dollars, increased by any
20 amount of tax credits for which approval shall be rescinded under the provisions
21 of section 253.559. For each fiscal year beginning on or after July 1, 2010, **but**
22 **ending on or before June 30, 2014**, the department of economic development
23 shall not approve applications for tax credits under the provisions of subsections
24 3 and 8 of section 253.559 which, in the aggregate, exceed one hundred forty
25 million dollars, increased by any amount of tax credits for which approval shall
26 be rescinded under the provisions of section 253.559. The limitations provided
27 under this subsection shall not apply to applications approved under the
28 provisions of subsection 3 of section 253.559 for projects to receive less than two
29 hundred seventy-five thousand dollars in tax credits.

30 3. For all applications for tax credits approved on or after January 1,
31 2010, no more than two hundred fifty thousand dollars in tax credits may be
32 issued for eligible costs and expenses incurred in the rehabilitation of an eligible
33 property which is a nonincome producing single-family, owner-occupied
34 residential property and is either a certified historic structure or a structure in
35 a certified historic district.

36 4. The limitations on tax credit authorization provided under the
37 provisions of subsections 2 and 3 of this section shall not apply to:

38 (1) Any application submitted by a taxpayer, which has received approval
39 from the department prior to January 1, 2010; or

40 (2) Any taxpayer applying for tax credits, provided under this section,
41 which, on or before January 1, 2010, has filed an application with the department
42 evidencing that such taxpayer:

43 (a) Has incurred costs and expenses for an eligible property which exceed
44 the lesser of five percent of the total project costs or one million dollars and
45 received an approved Part I from the Secretary of the United States Department
46 of Interior; or

47 (b) Has received certification, by the state historic preservation officer,
48 that the rehabilitation plan meets the standards consistent with the standards
49 of the Secretary of the United States Department of the Interior, and the
50 rehabilitation costs and expenses associated with such rehabilitation shall exceed
51 fifty percent of the total basis in the property.

52 **5. For each fiscal year beginning on or after July 1, 2014, the**
53 **department of economic development shall not approve applications for**
54 **tax credits under the provisions of subsections 3 and 8 of section**
55 **253.559 which, in the aggregate, exceed eighty million dollars,**
56 **increased by any amount of tax credits for which approval shall be**
57 **rescinded under the provisions of section 253.559. The limitations**
58 **provided under this subsection shall not apply to applications approved**
59 **under the provisions of subsection 3 of section 253.559 for projects to**
60 **receive less than two hundred seventy-five thousand dollars in tax**
61 **credits.**

62 **6. In lieu of the limitations on tax credit authorization provided**
63 **under the provisions of subsection 5 of this section, the limitations on**
64 **tax credit authorization provided under the provisions of subsections**
65 **2 and 3 of this section shall apply to:**

66 (1) Any application submitted by a taxpayer, which has received
67 approval from the department prior to the effective date of this act; or

68 (2) Any application for tax credits provided under this section
69 for a project, which on or before August 28, 2014:

70 (a) Received an approved Part I from the Secretary of the United
71 States Department of Interior and has incurred costs and expenses for

72 an eligible property which exceed the lesser of fifteen percent of the
73 total project costs or three million dollars; or

74 (b) Has received certification, by the state historic preservation
75 officer, that the rehabilitation plan meets the standards consistent with
76 the standards of the Secretary of the United States Department of the
77 Interior, and the rehabilitation costs and expenses associated with such
78 rehabilitation would, upon completion, be expected to exceed fifty
79 percent of the total basis in the property.

80 7. For each fiscal year beginning on or after July 1, 2014, the
81 department of economic development shall not approve applications for
82 projects to receive less than two hundred seventy-five thousand dollars
83 in tax credits which, in the aggregate, exceed ten million dollars,
84 increased by any amount of tax credits for which approval shall be
85 rescinded under the provisions of section 253.559. The limitations on
86 tax credit authorization provided under the provisions of this
87 subsection, shall not apply to:

88 (1) Any application submitted by a taxpayer, which has received
89 approval from the department prior to August 28, 2014; or

90 (2) Any application for tax credits provided under this section
91 for a project, which on or before August 28, 2014:

92 (a) Received an approved Part I from the Secretary of the United
93 States Department of Interior and has incurred costs and expenses for
94 an eligible property which exceed five percent of the total project costs;
95 or

96 (b) Has received certification, by the state historic preservation
97 officer, that the rehabilitation plan meets the standards consistent with
98 the standards of the Secretary of the United States Department of the
99 Interior, and the rehabilitation costs and expenses associated with such
100 rehabilitation would, upon completion, be expected to exceed fifty
101 percent of the total basis in the property.

253.557. 1. If the amount of such credit exceeds the total tax liability for
2 the year in which the rehabilitated property is placed in service, the amount that
3 exceeds the state tax liability may be carried back to any of the three preceding
4 years and carried forward for credit against the taxes imposed pursuant to
5 chapter 143 and chapter 148, except for sections 143.191 to 143.265 for the
6 succeeding ten years, or until the full credit is used, whichever occurs
7 first. Not-for-profit entities, including but not limited to corporations organized

8 as not-for-profit corporations pursuant to chapter 355 shall be ineligible for the
9 tax credits authorized under sections 253.545 [through 253.561] **to 253.559. Any**
10 **taxpayer that receives state tax credits under the provisions of sections**
11 **135.350 to 135.363 for a project that is not financed through tax exempt**
12 **bonds issuance shall be ineligible for the state tax credits authorized**
13 **under sections 253.545 to 253.559 for the same project.** Taxpayers eligible
14 for such tax credits may transfer, sell or assign the credits. Credits granted to
15 a partnership, a limited liability company taxed as a partnership or multiple
16 owners of property shall be passed through to the partners, members or owners
17 respectively pro rata or pursuant to an executed agreement among [the] **such**
18 partners, members or owners documenting an alternate distribution method.

19 2. The assignee of the tax credits, hereinafter the assignee for purposes
20 of this subsection, may use acquired credits to offset up to one hundred percent
21 of the tax liabilities otherwise imposed pursuant to chapter 143 and chapter 148,
22 except for sections 143.191 to 143.265. The assignor shall perfect such transfer
23 by notifying the department of economic development in writing within thirty
24 calendar days following the effective date of the transfer and shall provide any
25 information as may be required by the department of economic development to
26 administer and carry out the provisions of this section.

253.559. 1. To obtain approval for tax credits allowed under sections
2 253.545 to 253.559, a taxpayer shall submit an application for tax credits to the
3 department of economic development. Each application for approval, including
4 any applications received for supplemental allocations of tax credits as provided
5 under subsection 8 of this section, shall be prioritized for review and approval,
6 in the order of the date on which the application was postmarked, with the oldest
7 postmarked date receiving priority. Applications postmarked on the same day
8 shall go through a lottery process to determine the order in which such
9 applications shall be reviewed.

10 2. Each application shall be reviewed by the department of economic
11 development for approval. In order to receive approval, an application, other
12 than applications submitted under the provisions of subsection 8 of this section,
13 shall include:

14 (1) Proof of ownership or site control. Proof of ownership shall include
15 evidence that the taxpayer is the fee simple owner of the eligible property, such
16 as a warranty deed or a closing statement. Proof of site control may be evidenced
17 by a leasehold interest or an option to acquire such an interest. If the taxpayer

18 is in the process of acquiring fee simple ownership, proof of site control shall
19 include an executed sales contract or an executed option to purchase the eligible
20 property;

21 (2) Floor plans of the existing structure, architectural plans, and, where
22 applicable, plans of the proposed alterations to the structure, as well as proposed
23 additions;

24 (3) The estimated cost of rehabilitation, the anticipated total costs of the
25 project, the actual basis of the property, as shown by proof of actual acquisition
26 costs, the anticipated total labor costs, the estimated project start date, and the
27 estimated project completion date;

28 (4) Proof that the property is an eligible property and a certified historic
29 structure or a structure in a certified historic district; and

30 (5) Any other information which the department of economic development
31 may reasonably require to review the project for approval.

32 Only the property for which a property address is provided in the application
33 shall be reviewed for approval. Once selected for review, a taxpayer shall not be
34 permitted to request the review of another property for approval in the place of
35 the property contained in such application. Any disapproved application shall be
36 removed from the review process. If an application is removed from the review
37 process, the department of economic development shall notify the taxpayer in
38 writing of the decision to remove such application. Disapproved applications
39 shall lose priority in the review process. A disapproved application, which is
40 removed from the review process, may be resubmitted, but shall be deemed to be
41 a new submission for purposes of the priority procedures described in this section.

42 3. If the department of economic development deems the application
43 sufficient, the taxpayer shall be notified in writing of the approval for an amount
44 of tax credits equal to the amount provided under section 253.550 less any
45 amount of tax credits previously approved. Such approvals shall be granted to
46 applications in the order of priority established under this section and shall
47 require full compliance thereafter with all other requirements of law as a
48 condition to any claim for such credits.

49 4. Following approval of an application, the identity of the taxpayer
50 contained in such application shall not be modified except:

51 (1) The taxpayer may add partners, members, or shareholders as part of
52 the ownership structure, so long as the principal remains the same, provided
53 however, that subsequent to the commencement of renovation and the

54 expenditure of at least ten percent of the proposed rehabilitation budget, removal
55 of the principal for failure to perform duties and the appointment of a new
56 principal thereafter shall not constitute a change of the principal; or

57 (2) Where the ownership of the project is changed due to a foreclosure,
58 deed in lieu of a foreclosure or voluntary conveyance, or a transfer in
59 bankruptcy. **Upon any such change in ownership, the taxpayer contained**
60 **in such application shall notify the department of such change.**

61 5. In the event that the department of economic development grants
62 approval for tax credits equal to the **applicable** total amount available under
63 subsection 2, **5, or 7** of section 253.550, or sufficient that when totaled with all
64 other approvals, the **applicable** amount available under subsection 2, **5, or 7** of
65 section 253.550 is exhausted, all taxpayers with applications then awaiting
66 approval or thereafter submitted for approval shall be notified by the department
67 of economic development that no additional approvals shall be granted during the
68 fiscal year and shall be notified of the priority given to such taxpayer's
69 application then awaiting approval. Such applications shall be kept on file by the
70 department of economic development and shall be considered for approval for tax
71 credits in the order established in this section in the event that additional credits
72 become available due to the rescission of approvals or when a new fiscal year's
73 allocation of credits becomes available for approval.

74 6. All taxpayers with applications receiving approval on or after the
75 effective date of this act shall commence rehabilitation within two years of the
76 date of issuance of the letter from the department of economic development
77 granting the approval for tax credits. "Commencement of rehabilitation" shall
78 mean that as of the date in which actual physical work, contemplated by the
79 architectural plans submitted with the application, has begun, the taxpayer has
80 incurred no less than ten percent of the estimated costs of rehabilitation provided
81 in the application. Taxpayers with approval of a project shall submit evidence of
82 compliance with the provisions of this subsection. If the department of economic
83 development determines that a taxpayer has failed to comply with the
84 requirements provided under this section, the approval for the amount of tax
85 credits for such taxpayer shall be rescinded and such amount of tax credits shall
86 then be included in the **applicable** total amount of tax credits, provided under
87 subsection 2, **5, or 7** of section 253.550, from which approvals may be
88 granted. Any taxpayer whose approval shall be subject to rescission shall be
89 notified of such from the department of economic development and, upon receipt

90 of such notice, may submit a new application for the project.

91 7. To claim the credit authorized under sections 253.550 to 253.559, a
92 taxpayer with approval shall apply for final approval and issuance of tax credits
93 from the department of economic development which, in consultation with the
94 department of natural resources, shall determine the final amount of eligible
95 rehabilitation costs and expenses and whether the completed rehabilitation meets
96 the standards of the Secretary of the United States Department of the Interior
97 for rehabilitation as determined by the state historic preservation officer of the
98 Missouri department of natural resources. For financial institutions credits
99 authorized pursuant to sections 253.550 to 253.561 shall be deemed to be
100 economic development credits for purposes of section 148.064. The approval of all
101 applications and the issuing of certificates of eligible credits to taxpayers shall
102 be performed by the department of economic development. The department of
103 economic development shall inform a taxpayer of final approval by letter and
104 shall issue, to the taxpayer, tax credit certificates. The taxpayer shall attach the
105 certificate to all Missouri income tax returns on which the credit is claimed.

106 8. Except as expressly provided in this subsection, tax credit certificates
107 shall be issued in the final year that costs and expenses of rehabilitation of the
108 project are incurred, or within the twelve-month period immediately following the
109 conclusion of such rehabilitation. In the event the amount of eligible
110 rehabilitation costs and expenses incurred by a taxpayer would result in the
111 issuance of an amount of tax credits in excess of the amount provided under such
112 taxpayer's approval granted under subsection 3 of this section, such taxpayer may
113 apply to the department for issuance of tax credits in an amount equal to such
114 excess. Applications for issuance of tax credits in excess of the amount provided
115 under a taxpayer's application shall be made on a form prescribed by the
116 department. Such applications shall be subject to all provisions regarding
117 priority provided under subsection 1 of this section.

118 9. The department of economic development shall determine, on an annual
119 basis, the overall economic impact to the state from the rehabilitation of eligible
120 property.

121 **10. By no later than January 1, 2015, the department of economic**
122 **development shall propose rules to implement the provisions of**
123 **sections 253.550 to 253.559. Prior to proposing such rules, the**
124 **department shall conduct a stakeholder process designed to solicit**
125 **input from interested parties. Any rule or portion of a rule, as that**

126 term is defined in section 536.010, that is created under the authority
127 delegated herein shall become effective only if it complies with and is
128 subject to all of the provisions of chapter 536 and, if applicable, section
129 536.028. This section and chapter 536 are nonseverable and if any of
130 the powers vested with the general assembly pursuant to chapter 536
131 to review, to delay the effective date, or to disapprove and annul a rule
132 are subsequently held unconstitutional, then the grant of rulemaking
133 authority and any rule proposed or adopted after August 28, 2014, shall
134 be invalid and void.

Unofficial ✓

Bill

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