

FIRST REGULAR SESSION

SENATE BILL NO. 144

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 19, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0992S.011

AN ACT

To repeal sections 100.286 and 135.352, RSMo, and to enact in lieu thereof two new sections relating to a moratorium on the authorization of certain tax credits, with an emergency clause.

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

Section A. Sections 100.286 and 135.352, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 100.286 and 135.352, to read as follows:

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

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

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

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

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

(5) Does not exceed five million dollars;

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

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

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, may,
47 subject to the limitations provided under subsection 8 of this section, receive a tax
48 credit against any tax otherwise due under the provisions of chapter 143,
49 excluding withholding tax imposed by sections 143.191 to 143.261, chapter 147,
50 or chapter 148, in the amount of fifty percent of any amount contributed in money
51 or property by the taxpayer to the development and reserve fund, the
52 infrastructure development fund or the export finance fund during the taxpayer's
53 tax year, provided, however, the total tax credits awarded in any calendar year
54 beginning after January 1, 1994, shall not be the greater of ten million dollars or

55 five percent of the average growth in general revenue receipts in the preceding
56 three fiscal years. This limit may be exceeded only upon joint agreement by the
57 commissioner of administration, the director of the department of economic
58 development, and the director of the department of revenue that such action is
59 essential to ensure retention or attraction of investment in Missouri. If the board
60 receives, as a contribution, real property, the contributor at such contributor's
61 own expense shall have two independent appraisals conducted by appraisers
62 certified by the Master Appraisal Institute. Both appraisals shall be submitted
63 to the board, and the tax credit certified by the board to the contributor shall be
64 based upon the value of the lower of the two appraisals.

65 The board shall not certify the tax credit until the property is deeded to the
66 board. Such credit shall not apply to reserve participation fees paid by borrowers
67 under sections 100.250 to 100.297. The portion of earned tax credits which
68 exceeds the taxpayer's tax liability may be carried forward for up to five years.

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

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

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

91 taxable as income of the assignor, and the excess of the par value of such credit
92 over the amount paid by the assignee for such credit shall be taxable as income
93 of the assignee.

94 8. Provisions of subsections 1 to 7 of this section to the contrary
95 notwithstanding, no more than ten million dollars in tax credits provided under
96 this section, may be authorized or approved annually. The limitation on tax
97 credit authorization and approval provided under this subsection may be exceeded
98 only upon mutual agreement, evidenced by a signed and properly notarized letter,
99 by the commissioner of the office of administration, the director of the department
100 of economic development, and the director of the department of revenue that such
101 action is essential to ensure retention or attraction of investment in Missouri
102 provided, however, that in no case shall more than twenty-five million dollars in
103 tax credits be authorized or approved during such year. Taxpayers shall file,
104 with the board, an application for tax credits authorized under this section on a
105 form provided by the board. The provisions of this subsection shall not be
106 construed to limit or in any way impair the ability of the board to authorize tax
107 credits for issuance for projects authorized or approved, by a vote of the board,
108 on or before the thirtieth day following the effective date of this act, or a
109 taxpayer's ability to redeem such tax credits. **No tax credits authorized**
110 **under the provisions of this section shall be authorized for issuance**
111 **during the twelve-month period beginning on the effective date of this**
112 **act.**

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 more than six million dollars in tax credits shall be authorized each
13 fiscal year for projects financed through tax-exempt bond issuance. **No tax**
14 **credits authorized under the provisions of sections 135.350 to 135.363**

15 **shall be authorized for issuance during the twelve-month period**
16 **beginning on the effective date of this act.**

17 4. The Missouri low-income housing tax credit shall be taken against the
18 taxes and in the order specified pursuant to section 32.115. The credit authorized
19 by this section shall not be refundable. Any amount of credit that exceeds the tax
20 due for a taxpayer's taxable year may be carried back to any of the taxpayer's
21 three prior taxable years or carried forward to any of the taxpayer's five
22 subsequent taxable years.

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

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

36 7. The director of the department may promulgate rules and regulations
37 necessary to administer the provisions of this section. No rule or portion of a rule
38 promulgated pursuant to the authority of this section shall become effective
39 unless it has been promulgated pursuant to the provisions of section 536.024.

 Section B. Due to the need to ensure adequate state funding for necessary
2 services provided by the state, section A of this act is deemed necessary for the
3 immediate preservation of the public health, welfare, peace and safety, and is
4 hereby declared to be an emergency act within the meaning of the constitution,
5 and section A of this act shall be in full force and effect upon its passage and
6 approval.

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