

SECOND REGULAR SESSION

# SENATE BILL NO. 890

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

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

TERRY L. SPIELER, Secretary.

4787S.02I

## 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Section A. Sections 100.286 and 135.352, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 100.286 and 135.352, to read as follows: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,  
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. 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. **No tax credits authorized**  
111 **under the provisions of this section shall be authorized for issuance**  
112 **during the twelve-month period beginning on the effective date of this**  
113 **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, RSMo. The credit  
19 authorized by this section shall not be refundable. Any amount of credit that  
20 exceeds the tax due for a taxpayer's taxable year may be carried back to any of  
21 the taxpayer's three prior taxable years or carried forward to any of the  
22 taxpayer's five 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,  
40 RSMo.

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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