

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 112

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS RUPP AND RICHARD.

Pre-filed January 7, 2013, and ordered printed.

Read 2nd time January 24, 2013, and referred to the Committee on Jobs, Economic Development and Local Government.

Reported from the Committee March 14, 2013, with recommendation that the bill do pass.

Taken up for Perfection April 3, 2013. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0461S.02P

AN ACT

To repeal section 135.680, RSMo, and to enact in lieu thereof one new section relating to the new markets tax credit, with an emergency clause.

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

Section A. Section 135.680, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 135.680, to read as follows:

135.680. 1. As used in **subsections 1 to 4 of** this section, the following
2 terms shall mean:

3 (1) "Adjusted purchase price", the product of:

4 (a) The amount paid to the issuer of a qualified equity investment for such
5 qualified equity investment; and

6 (b) The following fraction:

7 a. The numerator shall be the dollar amount of qualified low-income
8 community investments held by the issuer in this state as of the credit allowance
9 date during the applicable tax year; and

10 b. The denominator shall be the total dollar amount of qualified
11 low-income community investments held by the issuer in all states as of the credit
12 allowance date during the applicable tax year;

13 c. For purposes of calculating the amount of qualified low-income
14 community investments held by an issuer, an investment shall be considered held
15 by an issuer even if the investment has been sold or repaid; provided that the
16 issuer reinvests an amount equal to the capital returned to or recovered by the

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

17 issuer from the original investment, exclusive of any profits realized, in another
18 qualified low-income community investment within twelve months of the receipt
19 of such capital. An issuer shall not be required to reinvest capital returned from
20 qualified low-income community investments after the sixth anniversary of the
21 issuance of the qualified equity investment, the proceeds of which were used to
22 make the qualified low-income community investment, and the qualified
23 low-income community investment shall be considered held by the issuer through
24 the seventh anniversary of the qualified equity investment's issuance;

25 (2) "Applicable percentage", zero percent for each of the first two credit
26 allowance dates, seven percent for the third credit allowance date, and eight
27 percent for the next four credit allowance dates;

28 (3) "Credit allowance date", with respect to any qualified equity
29 investment:

30 (a) The date on which such investment is initially made; and

31 (b) Each of the six anniversary dates of such date thereafter;

32 (4) "Long-term debt security", any debt instrument issued by a qualified
33 community development entity, at par value or a premium, with an original
34 maturity date of at least seven years from the date of its issuance, with no
35 acceleration of repayment, amortization, or prepayment features prior to its
36 original maturity date, and with no distribution, payment, or interest features
37 related to the profitability of the qualified community development entity or the
38 performance of the qualified community development entity's investment
39 portfolio. The foregoing shall in no way limit the holder's ability to accelerate
40 payments on the debt instrument in situations where the issuer has defaulted on
41 covenants designed to ensure compliance with this section or Section 45D of the
42 Internal Revenue Code of 1986, as amended;

43 (5) "Qualified active low-income community business", the meaning given
44 such term in Section 45D of the Internal Revenue Code of 1986, as amended;
45 provided that any business that derives or projects to derive fifteen percent or
46 more of its annual revenue from the rental or sale of real estate shall not be
47 considered to be a qualified active low-income community business;

48 (6) "Qualified community development entity", the meaning given such
49 term in Section 45D of the Internal Revenue Code of 1986, as amended; provided
50 that such entity has entered into an allocation agreement with the Community
51 Development Financial Institutions Fund of the U.S. Treasury Department with
52 respect to credits authorized by Section 45D of the Internal Revenue Code of

53 1986, as amended, which includes the state of Missouri within the service area
54 set forth in such allocation agreement;

55 (7) "Qualified equity investment", any equity investment in, or long-term
56 debt security issued by, a qualified community development entity that:

57 (a) Is acquired after September 4, 2007, **but before July 1, 2010**, at its
58 original issuance solely in exchange for cash;

59 (b) Has at least eighty-five percent of its cash purchase price used by the
60 issuer to make qualified low-income community investments; and

61 (c) Is designated by the issuer as a qualified equity investment under this
62 subdivision and is certified by the department of economic development as not
63 exceeding the limitation contained in subsection 2 of this section. This term shall
64 include any qualified equity investment that does not meet the provisions of
65 paragraph (a) of this subdivision if such investment was a qualified equity
66 investment in the hands of a prior holder;

67 (8) "Qualified low-income community investment", any capital or equity
68 investment in, or loan to, any qualified active low-income community
69 business. With respect to any one qualified active low-income community
70 business, the maximum amount of qualified low-income community investments
71 made in such business, on a collective basis with all of its affiliates, that may be
72 used from the calculation of any numerator described in subparagraph a. of
73 paragraph (b) of subdivision (1) of this subsection shall be ten million dollars
74 whether issued to one or several qualified community development entities;

75 (9) "Tax credit", a credit against the tax otherwise due under chapter 143,
76 excluding withholding tax imposed in sections 143.191 to 143.265, or otherwise
77 due under section 375.916 or chapter 147, 148, or 153;

78 (10) "Taxpayer", any individual or entity subject to the tax imposed in
79 chapter 143, excluding withholding tax imposed in sections 143.191 to 143.265,
80 or the tax imposed in section 375.916 or chapter 147, 148, or 153.

81 2. A taxpayer that makes a qualified equity investment earns a vested
82 right to tax credits under this section. On each credit allowance date of such
83 qualified equity investment the taxpayer, or subsequent holder of the qualified
84 equity investment, shall be entitled to a tax credit during the taxable year
85 including such credit allowance date. The tax credit amount shall be equal to the
86 applicable percentage of the adjusted purchase price paid to the issuer of such
87 qualified equity investment. The amount of the tax credit claimed shall not
88 exceed the amount of the taxpayer's state tax liability for the tax year for which

89 the tax credit is claimed. No tax credit claimed under this section shall be
90 refundable or transferable. Tax credits earned by a partnership, limited liability
91 company, S-corporation, or other pass-through entity may be allocated to the
92 partners, members, or shareholders of such entity for their direct use in
93 accordance with the provisions of any agreement among such partners, members,
94 or shareholders. Any amount of tax credit that the taxpayer is prohibited by this
95 section from claiming in a taxable year may be carried forward to any of the
96 taxpayer's five subsequent taxable years. The department of economic
97 development shall limit the monetary amount of qualified equity investments
98 permitted under this section to a level necessary to limit tax credit utilization at
99 no more than twenty-five million dollars of tax credits in any fiscal year. Such
100 limitation on qualified equity investments shall be based on the anticipated
101 utilization of credits without regard to the potential for taxpayers to carry
102 forward tax credits to later tax years.

103 3. The issuer of the qualified equity investment shall certify to the
104 department of economic development the anticipated dollar amount of such
105 investments to be made in this state during the first twelve-month period
106 following the initial credit allowance date. If on the second credit allowance date,
107 the actual dollar amount of such investments is different than the amount
108 estimated, the department of economic development shall adjust the credits
109 arising on the second allowance date to account for such difference.

110 4. The department of economic development shall recapture the tax credit
111 allowed under this section with respect to such qualified equity investment under
112 this section if:

113 (1) Any amount of the federal tax credit available with respect to a
114 qualified equity investment that is eligible for a tax credit under this section is
115 recaptured under Section 45D of the Internal Revenue Code of 1986, as amended;
116 or

117 (2) The issuer redeems or makes principal repayment with respect to a
118 qualified equity investment prior to the seventh anniversary of the issuance of
119 such qualified equity investment. Any tax credit that is subject to recapture shall
120 be recaptured from the taxpayer that claimed the tax credit on a return.

121 5. The department of economic development shall promulgate rules to
122 implement the provisions of this section, including recapture provisions on a
123 scaled proportional basis, and to administer the allocation of tax credits issued
124 for qualified equity investments, which shall be conducted on a first-come,

125 first-serve basis. Any rule or portion of a rule, as that term is defined in section
126 536.010, that is created under the authority delegated in this section shall
127 become effective only if it complies with and is subject to all of the provisions of
128 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
129 nonseverable and if any of the powers vested with the general assembly pursuant
130 to chapter 536 to review, to delay the effective date, or to disapprove and annul
131 a rule are subsequently held unconstitutional, then the grant of rulemaking
132 authority and any rule proposed or adopted after September 4, 2007, shall be
133 invalid and void.

134 6. [For fiscal years following fiscal year 2010, qualified equity investments
135 shall not be made under this section unless reauthorization is made pursuant to
136 this subsection. For all fiscal years following fiscal year 2010, unless the general
137 assembly adopts a concurrent resolution granting authority to the department of
138 economic development to approve qualified equity investments for the Missouri
139 new markets development program and clearly describing the amount of tax
140 credits available for the next fiscal year, or otherwise complies with the
141 provisions of this subsection, no qualified equity investments may be permitted
142 to be made under this section. The amount of available tax credits contained in
143 such a resolution shall not exceed the limitation provided under subsection 2 of
144 this section. In any year in which the provisions of this section shall sunset
145 pursuant to subsection 7 of this section, reauthorization shall be made by general
146 law and not by concurrent resolution. Nothing in this subsection shall preclude
147 a taxpayer who makes a qualified equity investment prior to the expiration of
148 authority to make qualified equity investments from claiming tax credits relating
149 to such qualified equity investment for each applicable credit allowance date.

150 7. Under section 23.253 of the Missouri sunset act:

151 (1) The provisions of the new program authorized under this section shall
152 automatically sunset six years after September 4, 2007, unless reauthorized by
153 an act of the general assembly; and

154 (2) If such program is reauthorized, the program authorized under this
155 section shall automatically sunset twelve years after the effective date of the
156 reauthorization of this section; and

157 (3) This section shall terminate on September first of the calendar year
158 immediately following the calendar year in which the program authorized under
159 this section is sunset. However, nothing in this subsection shall preclude a
160 taxpayer who makes a qualified equity investment prior to sunset of this section

161 under the provisions of section 23.253 from claiming tax credits relating to such
162 qualified equity investment for each credit allowance date.] **Subsections 1 to**
163 **5 of this section shall apply to qualified equity investments made after**
164 **September 4, 2007, but before July 1, 2010. Subsections 5 to 14 shall**
165 **apply to qualified equity investments made after the effective date of**
166 **this act.**

167 **7. As used in subsections 6 to 14 of this section, the following**
168 **terms shall mean:**

169 **(1) "Applicable percentage", zero percent for each of the first two**
170 **credit allowance dates, eleven percent for the next two credit allowance**
171 **dates, and twelve percent for the next three credit allowance dates;**

172 **(2) "Credit allowance date", with respect to any qualified equity**
173 **investment:**

174 **(a) The date on which such investment is initially made; and**

175 **(b) Each of the six anniversary dates of such date thereafter;**

176 **(3) "Long-term debt security", any debt instrument issued by a**
177 **qualified community development entity, at par value or a premium,**
178 **with an original maturity date of at least seven years from the date of**
179 **its issuance, with no acceleration of repayment, amortization, or**
180 **prepayment features prior to its original maturity date. The qualified**
181 **community development entity that issues the debt instrument shall not**
182 **make cash interest payments on the debt instrument during the period**
183 **beginning on the date of issuance and ending on the final credit**
184 **allowance date in an amount that exceeds the cumulative operating**
185 **income, as defined by regulations adopted under Section 45D, Internal**
186 **Revenue Code of 1986, as amended, of the qualified community**
187 **development entity for that period prior to giving effect to the expense**
188 **of such cash interest payments. The foregoing shall in no way limit the**
189 **holder's ability to accelerate payments on the debt instrument in**
190 **situations where the issuer has defaulted on covenants designed to**
191 **ensure compliance with this section or Section 45D of the Internal**
192 **Revenue Code of 1986, as amended;**

193 **(4) "Purchase price", the amount paid to the issuer of a qualified**
194 **equity investment for such qualified equity investment;**

195 **(5) "Qualified active low-income community business", the**
196 **meaning given such term in Section 45D of the Internal Revenue Code**
197 **of 1986, as amended, and 26 C.F.R. Sec. 1.45D-1, but limited to those**

198 businesses meeting the Small Business Administration size eligibility
199 standards established in 13 C.F.R. 121.101-201 at the time the qualified
200 low income community investment is made. A business shall be
201 considered a qualified active low-income community business for the
202 duration of the qualified community development entity's investment
203 in, or loan to, the business if the entity reasonably expects, at the time
204 it makes the investment or loan, that the business will continue to
205 satisfy the requirements for being a qualified active low-income
206 community business, other than the Small Business Administration size
207 standards, throughout the entire period of the investment or loan. Any
208 business that derives or projects to derive fifteen percent or more of its
209 annual revenue from the rental or sale of real estate shall not be
210 considered to be a qualified active low-income community
211 business. This exclusion does not apply to a business that is controlled
212 by, or under common control with, another business if the second
213 business:

214 (a) Does not derive or project to derive fifteen percent or more
215 of its annual revenue from the rental or sale of real estate; and

216 (b) Is the primary tenant of the real estate leased from the first
217 business;

218 (6) "Qualified community development entity", the meaning given
219 such term in Section 45D of the Internal Revenue Code of 1986, as
220 amended; provided that such entity has entered into, for the current
221 year or any prior year, an allocation agreement with the Community
222 Development Financial Institutions Fund of the U.S. Treasury
223 Department with respect to credits authorized by Section 45D of the
224 Internal Revenue Code of 1986, as amended, which includes the state
225 of Missouri within the service area set forth in such allocation
226 agreement. The term shall include subsidiary community development
227 entities of any such qualified community development entity;

228 (7) "Qualified equity investment", any equity investment in, or
229 long-term debt security issued by, a qualified community development
230 entity that:

231 (a) Is acquired after the effective date of this act, at its original
232 issuance solely in exchange for cash;

233 (b) Has at least eighty-five percent of its cash purchase price
234 used by the issuer to make qualified low-income community

235 investments by the first anniversary of the initial credit allowance
236 date; and

237 (c) Is designated by the issuer as a qualified equity investment
238 under this subdivision and is certified by the department of economic
239 development as not exceeding the limitation contained in subsection 8
240 of this section. This term shall include any qualified equity investment
241 that does not meet the provisions of paragraph (a) of this subdivision
242 if such investment was a qualified equity investment in the hands of a
243 prior holder;

244 (8) "Qualified low-income community investment", any capital or
245 equity investment in, or loan to, any qualified active low-income
246 community business;

247 (9) "Tax credit", a credit against the tax otherwise due under
248 chapter 143, excluding withholding tax imposed in sections 143.191 to
249 143.265, or otherwise due under section 375.916 or chapter 147, 148, or
250 153;

251 (10) "Taxpayer", any individual or entity subject to the tax
252 imposed in chapter 143, excluding withholding tax imposed in sections
253 143.191 to 143.265, or the tax imposed in section 375.916 or chapter 147,
254 148, or 153.

255 8. Any entity that makes a qualified equity investment earns a
256 vested right to tax credits under this section. On each credit allowance
257 date of such qualified equity investment the entity, or subsequent
258 holder of the qualified equity investment, shall be entitled to a tax
259 credit during the taxable year including such credit allowance
260 date. The tax credit amount shall be equal to the applicable percentage
261 of the purchase price paid to the issuer of such qualified equity
262 investment. The amount of the tax credit claimed shall not exceed the
263 amount of the taxpayer's state tax liability for the tax year for which
264 the tax credit is claimed. No tax credit claimed under this section shall
265 be refundable or saleable on the open market. Tax credits earned by
266 a partnership, limited liability company, S-corporation, or other pass-
267 through entity may be allocated to the partners, members, or
268 shareholders of such entity for their direct use in accordance with the
269 provisions of any agreement among such partners, members, or
270 shareholders. Any amount of tax credit that the taxpayer is prohibited
271 by this section from claiming in a taxable year may be carried forward

272 to any of the taxpayer's five subsequent taxable years. The department
273 of economic development shall limit the monetary amount of qualified
274 equity investments permitted under this section to a level necessary to
275 limit tax credit utilization at no more than fifteen million dollars of tax
276 credits in any fiscal year. Such limitation on qualified equity
277 investments shall be based on the anticipated utilization of credits
278 without regard to the potential for taxpayers to carry forward tax
279 credits to later tax years.

280 9. The issuer of the qualified equity investment shall certify to
281 the department of economic development the anticipated dollar amount
282 of such investments to be made in this state during the first twelve-
283 month period following the initial credit allowance date. If on the
284 second credit allowance date, the actual dollar amount of such
285 investments is different than the amount estimated, the department of
286 economic development shall adjust the credits arising on the second
287 allowance date to account for such difference.

288 10. The department of economic development shall recapture the
289 tax credit allowed under this section with respect to such qualified
290 equity investment under this section if:

291 (1) Any amount of the federal tax credit available with respect
292 to a qualified equity investment that is eligible for a tax credit under
293 this section is recaptured under Section 45D of the Internal Revenue
294 Code of 1986, as amended;

295 (2) The issuer redeems or makes principal repayment with
296 respect to a qualified equity investment prior to the seventh
297 anniversary of the issuance of such qualified equity investment. Any
298 tax credit that is subject to recapture shall be recaptured from the
299 taxpayer that claimed the tax credit on a return;

300 (3) The issuer fails to invest an amount equal to eighty-five
301 percent of the purchase price of the qualified equity investment in
302 qualified low-income community investments in Missouri within twelve
303 months of the issuance of the qualified equity investment and maintain
304 at least eighty-five percent of such level of investment in qualified low-
305 income community investments in Missouri until the last credit
306 allowance date for the qualified equity investment. For purposes of
307 this section, an investment shall be considered held by an issuer even
308 if the investment has been sold or repaid if the issuer reinvests an

309 amount equal to the capital returned to or recovered by the issuer from
310 the original investment, exclusive of any profits realized, in another
311 qualified low-income community investment within twelve months of
312 the receipt of such capital. An issuer shall not be required to reinvest
313 capital returned from qualified low-income community investments
314 after the earlier of:

315 (a) The sixth anniversary of the issuance of the qualified equity
316 investment, the proceeds of which were used to make the qualified low-
317 income community investment; or

318 (b) The date by which a qualified community development entity
319 has made qualified low income community investments with the
320 proceeds of such qualified equity investment on a cumulative basis
321 equal to at least one hundred and fifty percent of such proceeds.

322 If the requirements of either paragraph (a) or (b) of this subdivision
323 are met, the qualified low-income community investment shall be
324 considered held by the issuer through the seventh anniversary of the
325 qualified equity investment's issuance; or

326 (4) At any time prior to the final credit allowance date of a
327 qualified equity investment the issuer uses the cash proceeds of such
328 qualified equity investment to make qualified low-income community
329 investments in any one qualified active low-income community
330 business, including affiliated qualified active low-income community
331 business, exclusive of reinvestments of capital returned or repaid with
332 respect to earlier investments in such qualified active low-income
333 community business and its affiliates, in excess of twenty-five percent
334 of such cash proceeds.

335 No recapture shall occur until the qualified community development
336 entity shall have been given notice of noncompliance and afforded six
337 months from the date of such notice to cure the noncompliance.

338 11. A qualified community development entity that seeks to have
339 an equity investment or long-term debt security designated as a
340 qualified equity investment and eligible for tax credits under this
341 section shall pay a fee in the amount of one-half of one percent of the
342 amount of the equity investment or long-term debt security requested
343 to be designated as a qualified equity investment to the department of
344 economic development for deposit in the new markets performance
345 guarantee fund established by subsection 12 of this section. The entity

346 shall forfeit the fee in its entirety if the qualified community
347 development entity or any subsidiary qualified community development
348 entity that issues a qualified equity investment certified under this
349 section fails to invest an amount equal to eighty-five percent of the
350 purchase price of the qualified equity investment in qualified low-
351 income community investments in Missouri within twelve months of the
352 issuance of the qualified equity investment. The entity shall have six
353 months from the date of notice of compliance with this requirement to
354 cure this noncompliance. The fee shall be held in the new markets
355 performance guarantee fund until such time as compliance with the
356 provisions of this subsection shall have been established. The qualified
357 community development entity may request a refund of the fee from the
358 department no sooner than thirty days after meeting the requirements
359 of this subsection. The department shall have thirty days to comply
360 with such request or give notice of noncompliance.

361 12. There is hereby created in the state treasury the "New
362 Markets Performance Guarantee Fund", which shall consist of money
363 collected under subsection 11 of this section. The state treasurer shall
364 be custodian of the fund. In accordance with sections 30.170 and 30.180,
365 the state treasurer may approve disbursements. The fund shall be a
366 dedicated fund and, upon appropriation, money in the fund shall be
367 used solely for the administration of this section. Notwithstanding the
368 provisions of section 33.080, to the contrary, any moneys remaining in
369 the fund at the end of the biennium shall not revert to the credit of the
370 general revenue fund. The state treasurer shall invest moneys in the
371 fund in the same manner as other funds are invested. Any interest and
372 moneys earned on such investments shall be credited to the fund.

373 13. (1) Once a qualified equity investment is designated as such
374 by the department of economic development the investment shall be
375 deemed "bound". A qualified equity investment may not be unbound
376 unless all of the requirements of subdivision (2) of this subsection have
377 been met. Until all qualified equity investments issued by a qualified
378 community development entity are unbound under this subsection, the
379 qualified community development entity shall not be entitled to
380 distribute to its equity holders or make cash payments on long-term
381 debt securities that have been designated as qualified equity
382 investments in an amount that exceeds the sum of:

383 (a) The cumulative operating income, as defined by regulations
384 adopted under Section 45D, Internal Revenue Code of 1986, as
385 amended, earned by the qualified community development entity since
386 issuance of the qualified equity investment, prior to giving effect to any
387 expense from the payment of interest on long-term debt securities
388 designated as qualified equity investments; and

389 (b) Fifty percent of the purchase price of the qualified equity
390 investments issued by the qualified community development entity.

391 (2) To be unbound, a qualified equity investment shall:

392 (a) Be beyond its seventh credit allowance date;

393 (b) Have been in compliance with subsection 10 of this section
394 up through its seventh credit allowance date; and

395 (c) Have had its proceeds invested in qualified active low income
396 community investments such that the total qualified active low income
397 community investments made, cumulatively including reinvestments,
398 exceeds one hundred and fifty percent of its qualified equity
399 investment.

400 (3) A community development entity that seeks to have a
401 qualified equity investment unbound under this section shall send
402 notice to the department of economic development of its request to be
403 unbound along with evidence supporting the request. The qualified
404 equity investment shall be deemed to have been in compliance with
405 subsection 10 of this section if no recapture action has been
406 commenced by the department of economic development as of the
407 seventh credit allowance date. Such request shall not be unreasonably
408 denied and shall be responded to within thirty days of receiving the
409 request. If the request is denied for any reason, the burden of proof
410 shall be on the department in any administrative or legal proceeding
411 that follows.

412 14. No qualified community development entity shall be entitled
413 to pay to any affiliate of such qualified community development entity
414 any fees in connection with any activity under this section prior to the
415 being unbound under subsection 13 of this section of all qualified
416 equity investments issued by such qualified community development
417 entity. A qualified community development entity is not prohibited
418 from allocating or distributing income earned by it to such affiliates or
419 paying reasonable interest on amounts lent to the qualified community

420 development entity by such affiliates.

421 **15. Pursuant to section 23.253 of the Missouri sunset act:**

422 **(1) The provisions of the new program authorized under**
423 **subsections 6 to 14 of this section shall sunset automatically six years**
424 **after the effective date of this act, unless reauthorized by an act of the**
425 **general assembly; and**

426 **(2) If such program is reauthorized, the program authorized**
427 **under subsections 6 to 14 of this section shall sunset automatically**
428 **twelve years after the effective date of the reauthorization of**
429 **subsections 6 to 14 of this section; and**

430 **(3) Subsections 6 to 14 of this section shall terminate on**
431 **September first of the calendar year immediately following the**
432 **calendar year in which the program authorized under subsections 6 to**
433 **14 of this section is sunset.**

Section B. Because immediate action is necessary to encourage economic
2 development in 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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