

FIRST REGULAR SESSION

HOUSE BILL NO. 905

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ZERR (Sponsor) AND DIEHL (Co-sponsor).

2039L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 253.545, 253.550, and 253.559, RSMo, and to enact in lieu thereof three new sections relating to historic structures rehabilitation tax credits.

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

Section A. Sections 253.545, 253.550, and 253.559, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 253.545, 253.550, and 253.559, to read as follows:

253.545. As used in sections 253.545 to 253.559, the following terms mean, unless the context requires otherwise:

(1) "Certified historic structure", a property located in Missouri and listed individually on the National Register of Historic Places;

(2) "Deed in lieu of foreclosure or voluntary conveyance", a transfer of title from a borrower to the lender to satisfy the mortgage debt and avoid foreclosure;

(3) **"Department", the department of economic development;**

(4) "Eligible property", property located in Missouri and offered or used for residential or business purposes;

[(4)] (5) "Leasehold interest", a lease in an eligible property for a term of not less than thirty years;

[(5)] (6) "Principal", a managing partner, general partner, or president of a taxpayer;

[(6)] (7) "Structure in a certified historic district", a structure located in Missouri which is certified by the department of natural resources as contributing to the historic significance of a certified historic district listed on the National Register of Historic Places, or a local district that has been certified by the United States Department of the Interior;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 [(7)] (8) "Taxpayer", any person, firm, partnership, trust, estate, limited liability
18 company, or corporation;

19 (9) **"Total costs and expenses of rehabilitation", includes but is not limited to**
20 **qualified rehabilitation expenditures as defined in Section 47(c)(2) of the Internal Revenue**
21 **Code of 1986, as amended, and any related regulations promulgated under such section,**
22 **and other reasonable costs and expenses related to the rehabilitation of eligible property**
23 **that is a certified historic structure or a structure in a certified historic district. Taxpayers**
24 **may incur qualifying expenses included in the total costs and expenses of rehabilitation at**
25 **their own risk from the commencement of construction or one year before the receipt of**
26 **approval of a preliminary application under section 253.559, whichever is earlier.**

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

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

25 3. For all applications for tax credits approved on or after January 1, 2010, no more than
26 two hundred fifty thousand dollars in tax credits may be issued for eligible costs and expenses

27 incurred in the rehabilitation of an eligible property which is a nonincome producing
28 single-family, owner-occupied residential property and is either a certified historic structure or
29 a structure in a certified historic district.

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

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

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

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

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

253.559. 1. To obtain approval for tax credits allowed under sections 253.545 to
2 253.559, a taxpayer shall submit [an application] **both preliminary and final applications** for
3 tax credits to the department [of economic development] **as required under this section, except**
4 **that rehabilitation projects that are otherwise exempt from the preliminary application**
5 **process or that are not subject to the limitations on tax credit authorization provided for**
6 **under section 253.550 shall be required to submit only a final application for tax credits.**
7 Each application for approval, including any applications received for supplemental allocations
8 of tax credits as provided under subsection 8 of this section, shall be prioritized for review and
9 approval, in the order of the date on which the application was postmarked, with the oldest
10 postmarked date receiving priority. Applications postmarked on the same day shall go through
11 a lottery process to determine the order in which such applications shall be reviewed.

12 2. Each **preliminary and final** application shall be reviewed by the department [of
13 economic development] for approval. In order to receive approval, [an] **a preliminary**
14 application, other than applications submitted under the provisions of subsection 8 of this
15 section, shall include:

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

20 control shall include an executed sales contract or an executed option to purchase the eligible
21 property;

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

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

27 (4) Proof that the property is an eligible property and a certified historic structure or a
28 structure in a certified historic district, **or evidence that the taxpayer has submitted the**
29 **necessary documentation to qualify the property as an eligible property and a certified**
30 **historic structure or as a structure in a certified historic district. A final determination of**
31 **such qualifications shall not be a prerequisite for approval of the preliminary application**
32 **or the incurrence of eligible costs;** and

33 (5) Any other information which the department [of economic development] may
34 reasonably require to review the project for approval.

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

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

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

53 (1) The taxpayer may add partners, members, or shareholders as part of the ownership
54 structure, so long as the principal remains the same, provided however, that subsequent to the
55 commencement of renovation and the expenditure of at least ten percent of the proposed

56 rehabilitation budget, removal of the principal for failure to perform duties and the appointment
57 of a new principal thereafter shall not constitute a change of the principal; or

58 (2) Where the ownership of the project is changed due to a foreclosure, deed in lieu of
59 a foreclosure or voluntary conveyance, or a transfer in bankruptcy.

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

71 6. All taxpayers with applications receiving approval on or after the effective date of this
72 act shall commence rehabilitation, **if rehabilitation has not previously begun**, within two years
73 of the date of issuance of the letter from the department [of economic development] granting the
74 approval for tax credits. "Commencement of rehabilitation" shall mean that as of the date in
75 which actual physical work, contemplated by the architectural plans submitted with the
76 application, has begun, the taxpayer has incurred no less than ten percent of the estimated costs
77 of rehabilitation provided in the application. Taxpayers with approval of a project shall submit
78 evidence of compliance with the provisions of this subsection. **Taxpayers may commence**
79 **rehabilitation and incur qualifying expenses at their own risk before the property is listed**
80 **on the required historic register. If the rehabilitation receives final approval under this**
81 **section, including the necessary verification of the total costs and expenses of rehabilitation,**
82 **the taxpayer shall receive tax credits for all qualifying expenses.** If the department [of
83 economic development] determines that a taxpayer has failed to comply with the requirements
84 provided under this section, the approval for the amount of tax credits for such taxpayer shall be
85 rescinded and such amount of tax credits shall then be included in the total amount of tax credits,
86 provided under subsection 2 of section 253.550, from which approvals may be granted. Any
87 taxpayer whose approval shall be subject to rescission shall be notified of such from the
88 department [of economic development] and, upon receipt of such notice, may submit a new
89 application for the project.

90 7. To claim the credit authorized under sections 253.550 to 253.559, a taxpayer with
91 approval shall apply for final approval and issuance of tax credits from the department [of

92 economic development] which, in consultation with the department of natural resources, shall
93 determine the final amount of eligible rehabilitation costs and expenses and whether the
94 completed rehabilitation meets the standards of the Secretary of the United States Department
95 of the Interior for rehabilitation as determined by the state historic preservation officer of the
96 Missouri department of natural resources. **Such a determination by the department of natural
97 resources shall be required only for final approval and issuance of tax credits and shall not
98 be required for approval of a preliminary application for tax credits.** For financial
99 institutions credits 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 applications
101 and the issuing of certificates of eligible credits to taxpayers shall be performed by the
102 department [of economic development]. The department [of economic development] shall
103 inform a taxpayer of final approval by letter and shall issue, to the taxpayer, tax credit
104 certificates. The taxpayer shall attach the certificate to all Missouri income tax returns on which
105 the credit is claimed.

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

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

121 **10. Taxpayers or duly authorized representatives may appeal any official decision,
122 including all preliminary or final approvals and denials of approvals, made by the
123 department or the department of natural resources with regard to an application
124 submitted under sections 253.550 to 253.559 to an independent third-party appeals officer
125 designated by the department. Such appeals under this section shall constitute an
126 administrative review of the decision appealed from and shall not be conducted as an
127 adjudicative proceeding.**

128 **(1) Appeals shall be submitted to the designated appeals officer in writing within**
129 **thirty days of receipt by the taxpayer or the taxpayer's duly authorized representative of**
130 **the decision that is the subject of the appeal, and shall include all information the appellant**
131 **wishes the appeals officer to consider in deciding the appeal.**

132 **(2) Upon receipt of an appeal, the appeals officer shall notify the department or the**
133 **department of natural resources that an appeal is pending, identify the decision being**
134 **appealed, and forward a copy of the information submitted by the appellant. The**
135 **department or the department of natural resources may submit a written response to the**
136 **appeal.**

137 **(3) The appellant shall be entitled to one meeting with the appeals officer to discuss**
138 **the appeal, but the appeals officer may schedule additional meetings at the officer's**
139 **discretion. The department or the department of natural resources may appear at all**
140 **meetings.**

141 **(4) The appeals officer shall consider the record of the decision in question, any**
142 **further written submissions by the appellant and the department or the department of**
143 **natural resources, and other available information, and shall deliver a written decision to**
144 **all parties as promptly as circumstances permit.**

145 **11. Notwithstanding any other provision of law to the contrary, the department**
146 **may charge a fee of not more than one percent of the estimated cost of rehabilitation for**
147 **each preliminary application submitted under this section, which shall be used solely for**
148 **the purpose of funding the administration of the tax credit program authorized under**
149 **sections 253.550 to 253.559 by the department and the department of natural resources.**