

FIRST REGULAR SESSION

HOUSE BILL NO. 240

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HOBBS (Sponsor), BRUNS, PRATT, RICHARD, WILSON (130),
CUNNINGHAM, WASSON AND FLOOK (Co-sponsors).

0986L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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Section A. Section 135.680, RSMo, is repealed and one new section enacted in lieu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

135.680. 1. As used in this section, the following terms shall mean:

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

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

5 (b) The following fraction:

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

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

12 c. For purposes of calculating the amount of qualified low-income community
13 investments held by an issuer, an investment shall be considered held by an issuer even if the
14 investment has been sold or repaid; provided that the issuer reinvests an amount equal to the
15 capital returned to or recovered by the issuer from the original investment, exclusive of any
16 profits realized, in another qualified low-income community investment within twelve months

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 of the receipt of such capital. An issuer shall not be required to reinvest capital returned from
18 qualified low-income community investments after the sixth anniversary of the issuance of the
19 qualified equity investment, the proceeds of which were used to make the qualified low-income
20 community investment, and the qualified low-income community investment shall be considered
21 held by the issuer through the seventh anniversary of the qualified equity investment's issuance;

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

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

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

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

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

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

42 (6) "Qualified community development entity", the meaning given such term in Section
43 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered
44 into an allocation agreement with the Community Development Financial Institutions Fund of
45 the U.S. Treasury Department with respect to credits authorized by Section 45D of the Internal
46 Revenue Code of 1986, as amended, which includes the state of Missouri within the service area
47 set forth in such allocation agreement;

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

50 (a) Is acquired after September 4, 2007, at its original issuance solely in exchange for
51 cash;

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

54 (c) Is designated by the issuer as a qualified equity investment under this subdivision and
55 is certified by the department of economic development as not exceeding the limitation contained
56 in subsection 2 of this section.

57 This term shall include any qualified equity investment that does not meet the provisions of
58 paragraph (a) of this subdivision if such investment was a qualified equity investment in the
59 hands of a prior holder;

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

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

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

73 2. A taxpayer that makes a qualified equity investment earns a vested right to tax credits
74 under this section. On each credit allowance date of such qualified equity investment the
75 taxpayer, or subsequent holder of the qualified equity investment, shall be entitled to a tax credit
76 during the taxable year including such credit allowance date. The tax credit amount shall be
77 equal to the applicable percentage of the adjusted purchase price paid to the issuer of such
78 qualified equity investment. The amount of the tax credit claimed shall not exceed the amount
79 of the taxpayer's state tax liability for the tax year for which the tax credit is claimed. No tax
80 credit claimed under this section shall be refundable or transferable. Tax credits earned by a
81 partnership, limited liability company, S-corporation, or other pass-through entity may be
82 allocated to the partners, members, or shareholders of such entity for their direct use in
83 accordance with the provisions of any agreement among such partners, members, or
84 shareholders. Any amount of tax credit that the taxpayer is prohibited by this section from
85 claiming in a taxable year may be carried forward to any of the taxpayer's five subsequent taxable
86 years. The department of economic development shall limit the monetary amount of qualified
87 equity investments permitted under this section to a level necessary to limit tax credit utilization

88 at no more than [fifteen] **twenty-seven** million **five hundred thousand** dollars of tax credits in
89 any fiscal year. Such limitation on qualified equity investments shall be based on the anticipated
90 utilization of credits without regard to the potential for taxpayers to carry forward tax credits to
91 later tax years.

92 3. The issuer of the qualified equity investment shall certify to the department of
93 economic development the anticipated dollar amount of such investments to be made in this state
94 during the first twelve-month period following the initial credit allowance date. If on the second
95 credit allowance date, the actual dollar amount of such investments is different than the amount
96 estimated, the department of economic development shall adjust the credits arising on the second
97 allowance date to account for such difference.

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

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

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

107 5. The department of economic development shall promulgate rules to implement the
108 provisions of this section, including recapture provisions on a scaled proportional basis, and to
109 administer the allocation of tax credits issued for qualified equity investments, which shall be
110 conducted on a first-come, first-serve basis. Any rule or portion of a rule, as that term is defined
111 in section 536.010, RSMo, that is created under the authority delegated in this section shall
112 become effective only if it complies with and is subject to all of the provisions of chapter 536,
113 RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
114 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
115 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently
116 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
117 after September 4, 2007, shall be invalid and void.

118 6. For fiscal years following fiscal year [2010] **2012**, qualified equity investments shall
119 not be made under this section unless reauthorization is made pursuant to this subsection. For
120 all fiscal years following fiscal year [2010] **2012**, unless the general assembly adopts a
121 concurrent resolution granting authority to the department of economic development to approve
122 qualified equity investments for the Missouri new markets development program and clearly
123 describing the amount of tax credits available for the next fiscal year, or otherwise complies with

124 the provisions of this subsection, no qualified equity investments may be permitted to be made
125 under this section. The amount of available tax credits contained in such a resolution shall not
126 exceed the limitation provided under subsection 2 of this section. In any year in which the
127 provisions of this section shall sunset pursuant to subsection 7 of this section, reauthorization
128 shall be made by general law and not by concurrent resolution. Nothing in this subsection shall
129 preclude a taxpayer who makes a qualified equity investment prior to the expiration of authority
130 to make qualified equity investments from claiming tax credits relating to such qualified equity
131 investment for each applicable credit allowance date.

132 7. Under section 23.253, RSMo, of the Missouri sunset act:

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

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

139 (3) This section shall terminate on September first of the calendar year immediately
140 following the calendar year in which the program authorized under this section is sunset.

141 However, nothing in this subsection shall preclude a taxpayer who makes a qualified equity
142 investment prior to sunset of this section under the provisions of section 23.253, RSMo, from
143 claiming tax credits relating to such qualified equity investment for each credit allowance date.

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