

FIRST REGULAR SESSION

# HOUSE BILL NO. 1112

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES FLOOK (Sponsor), BRANDOM, CORCORAN,  
KOMO AND DIEHL (Co-sponsors).

2482L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 108, RSMo, by adding thereto twenty-two new sections relating to recovery zone bonds, with an emergency clause.

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

Section A. Chapter 108, RSMo, is amended by adding thereto twenty-two new sections,  
2 to be known as sections 108.1000, 108.1010, 108.1020, 108.1030, 108.1040, 108.1050,  
3 108.1060, 108.1070, 108.1080, 108.1090, 108.1100, 108.1110, 108.1120, 108.1130, 108.1140,  
4 108.1150, 108.1160, 108.1170, 108.1180, 108.1190, 108.1195, and 108.1200, to read as follows:

**108.1000. Sections 108.1000 to 108.1200 shall be known and may be cited as the**  
2 **"Missouri Recovery and Reinvestment Tax Act".**

**108.1010. Sections 108.1000 to 108.1200 shall implement the provisions of the**  
2 **American Recovery and Reinvestment Act of 2009, as enacted by the 111th United States**  
3 **Congress, relating to economic development. The director of the department is hereby**  
4 **authorized to implement the provisions of sections 108.1100 to 108.1200 in a manner**  
5 **consistent with regulations issued under the AORTA.**

**108.1020. 1. As used in sections 108.1000 to 108.1200, the following terms mean:**

2 (1) **"Allocation", an allocation for the issuance of recovery zone economic**  
3 **development bonds and recovery zone facility bonds under sections 108.1000 to 108.1200;**

4 (2) **"AORTA", American Recovery and Reinvestment Act of 2009, as enacted by**  
5 **the 111th United States Congress;**

6 (3) **"Board", the Missouri development finance board established under sections**  
7 **100.250 to 100.286, RSMo;**

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.

- 8 (4) "Bonds", bonds, notes or other evidence of indebtedness;
- 9 (5) "Build America bond", has the meaning set forth in the AORTA;
- 10 (6) "Code", the Internal Revenue Code of 1986, as amended;
- 11 (7) "Department", the Missouri department of economic development;
- 12 (8) "Development agency", has the meaning set forth in section 100.255, RSMo;
- 13 (9) "Director", the director of the department of economic development or his or
- 14 her designee;
- 15 (10) "General distress", conditions in an area which constitute an economic or
- 16 social liability or a menace to the public health, safety, morals, or welfare;
- 17 (11) "Project", has the meaning set forth in section 100.255, RSMo;
- 18 (12) "Recovery stimulus fund", has the meaning set forth in section 108.1050;
- 19 (13) "Recovery zone economic development bond limitation", the allocation
- 20 received by the state under the AORTA which may be reallocated to development agencies
- 21 of recovery zone economic development bonds;
- 22 (14) "Recovery zone facility bond limitation", the allocation received by the state
- 23 under the AORTA which may be reallocated to development agencies of recovery zone
- 24 facility bonds;
- 25 (15) "Recovery zone bond", any recovery zone economic development bond or
- 26 recovery zone facility bond;
- 27 (16) "Recovery zone economic development bond", has the meaning set forth in the
- 28 AORTA;
- 29 (17) "Recovery zone facility bond", has the meaning set forth in the AORTA; and
- 30 (18) "Tax credit", any credit against state or federal income taxes imposed on a
- 31 bondholder under state or federal laws or regulations, and any credit or payment to a
- 32 development agency that issues bonds as provided in the AORTA.

33 2. Words and terms used in sections 108.1000 to 108.1200 which are defined in the

34 AORTA shall have the meanings assigned in the AORTA.

108.1030. 1. The board may at any time issue build America bonds and recovery

2 zone bonds for the purpose of paying any part of the cost of financing any qualifying

3 project or projects, or part thereof, and for the purpose of purchasing any bonds issued

4 by or on behalf of any development agency. All bonds issued by the board under this

5 section shall be subject to section 100.275, RSMo.

6 2. Any development agency, state board, state commission or other body corporate

7 and politic of the state that is authorized to issue revenue bonds shall also have the power

8 to issue build America bonds and recovery zone bonds subject to the provisions of law

9 governing the issuance of such revenue bonds. Proceeds of such bonds shall be applied as  
10 provided in the provisions of law governing the issuance of such revenue bonds.

11 3. The issuance of build America bonds or recovery zone bonds may be combined  
12 with every other economic development program offered by the state.

108.1040. 1. The board may enter into a financing agreement with any  
2 development agency or qualified business with respect to a project to be funded with build  
3 America bonds or recovery zone bonds. The terms and provisions of each financing  
4 agreement shall be determined by negotiations between the board and the development  
5 agency or qualified business.

6 2. The financing agreement shall provide in substance that:

7 (1) It may be assigned by the development agency or qualified business only upon  
8 the prior written consent of the board following the adoption of a resolution by the board  
9 to such effect; and

10 (2) Upon default by the qualified business in any obligations under the financing  
11 agreement or other documents evidencing, securing or related to the qualified business's  
12 obligations, the board may, at its option, to:

13 (a) Declare the financing agreement or other such documents in default;

14 (b) Accelerate and declare the total of all such payments due by the qualified  
15 business and sell the project at public, private, or judicial sale;

16 (c) Pursue any remedy provided under the financing agreement or other such  
17 documents;

18 (d) Be entitled to the appointment of a receiver by the circuit court wherein any  
19 part of the project is located; or

20 (e) Pursue any other applicable legal remedy.

108.1050. 1. There is hereby created a special fund to be known as the "Recovery  
2 Stimulus Fund" into which the following may be deposited as and when received and  
3 designated for deposit in such fund:

4 (1) Any moneys made available to the state of Missouri or its cities, counties, or  
5 political subdivisions through the issuance of bonds in compliance with the AORTA;

6 (2) Any moneys appropriated by the general assembly under the AORTA or under  
7 sections 108.1000 to 108.1200;

8 (3) Any moneys made available to the state or any city, county, or political  
9 subdivision of the state under the AORTA or under sections 108.1000 to 108.1200;

10 (4) Any moneys resulting from any tax credit received, paid to, payable to, or made  
11 available to any development agency under the AORTA or under sections 108.1000 to  
12 108.1200;

13           **(5) Any moneys from the federal government for infrastructure development or for**  
14 **any other purposes;**

15           **(6) Any moneys received from grants which are given, donated or contributed to**  
16 **the recovery stimulus fund or to the department or board under the AORTA or under**  
17 **sections 108.1000 to 108.1200;**

18           **(7) Any public or private funds received by the board or the department for deposit**  
19 **in the recovery stimulus fund;**

20           **(8) Any moneys obtained from the issuance of bonds by the board to implement the**  
21 **AORTA or sections 108.1000 to 108.1200; and**

22           **(9) Any moneys obtained from any other available source and used in connection**  
23 **with sections 108.1000 to 108.1200.**

24           **2. The recovery stimulus fund shall be administered by the board as provided in**  
25 **sections 108.1000 to 108.1200. Separate accounts may be created within the recovery**  
26 **stimulus fund for moneys specifically appropriated, donated, or otherwise received. The**  
27 **board may also create such other separate accounts within the recovery stimulus fund as**  
28 **deemed necessary or appropriate by the board to carry out the duties and purposes of**  
29 **sections 108.1000 to 108.1200. All such separate accounts may be administered by a**  
30 **corporate trustee on behalf of the board upon the terms and conditions established by the**  
31 **board.**

32           **3. Prior to making or using any moneys in the stimulus fund for any of the purposes**  
33 **authorized by sections 108.1000 to 108.1200, the board shall find and determine that the**  
34 **project to be assisted as a result of such use would not proceed but for the use of such**  
35 **funds.**

36           **4. The recovery stimulus fund shall not be considered a state fund, and money**  
37 **deposited therein shall not be appropriated therefrom, nor shall any money deposited**  
38 **therein be subject to the provisions of section 33.080, RSMo.**

39           **5. Any moneys deposited in or disbursed from the recovery stimulus fund or**  
40 **received by the board under the AORTA or sections 108.1000 to 108.1200 may be**  
41 **combined, commingled, disbursed and expended with other funds maintained, used,**  
42 **disbursed, or expended by the board, the department, or any other state agency for a**  
43 **project that is funded in part under the AORTA or sections 108.1000 to 108.1200.**

**108.1060. 1. Within the discretion of the board, the recovery stimulus fund or any**  
2 **portion thereof may be pledged to secure the payment of any bonds issued by the board,**  
3 **or to secure the payment of any loan made or purchased by the board which loan is:**

4           **(1) Requested to finance any project or to provide funds for the financing of more**  
5 **than one project;**

6 (2) Requested by a borrower who is demonstrated to be financially responsible;

7 (3) Requested to finance a project that would not be feasible without such loan or  
8 pledge of the recovery stimulus fund; and

9 (4) Expected to provide an immediate and measurable benefit to the economy of  
10 this state resulting in the creation or retention of jobs.

11 2. The board shall prescribe standards for the evaluation of the financial condition,  
12 business history, and qualifications of each borrower and the terms and conditions of loans  
13 which may be secured, and may require each application to include a financial report and  
14 evaluation by an independent certified public accounting firm.

108.1070. In addition to the powers set forth in sections 100.250 to 100.297, RSMo,  
2 section 100.720, RSMo, or any other laws of this state, the board shall have all of the  
3 powers necessary to carry out and effectuate the purposes and provisions of sections  
4 108.1000 to 108.1200, including, but not limited to, the power to:

5 (1) Administer the recovery stimulus fund and direct disbursements from the  
6 recovery stimulus fund as provided in sections 108.1000 to 108.1200 and invest any portion  
7 of such funds not required for immediate disbursement in obligations of the United States,  
8 or any agency or instrumentality of the United States, in obligations of the state of Missouri  
9 and its political subdivisions, in certificates of deposit and time deposits or other  
10 obligations of banks and savings and loan associations or in such other obligations as may  
11 be prescribed by the board;

12 (2) Enter into agreements with development agencies, borrowers, participating  
13 lenders and others to implement any of the provisions of sections 108.1000 to 108.1200;

14 (3) Consider and review applications for grants or loans to be made by or secured  
15 by the recovery stimulus fund or for loans or bonds to be made by or secured by the  
16 recovery stimulus fund or any other available money, under sections 108.1000 to 108.1200;

17 (4) Apply for and accept gifts, grants, appropriations, loans, or contributions to the  
18 recovery stimulus fund from any source, public or private, and enter into contracts or  
19 other transactions with any federal or state agency, any city, county, or political  
20 subdivision, any development agency, private organization, or any other source in  
21 furtherance of the purposes of sections 108.1000 to 108.1200, and do any and all things  
22 necessary in order to avail itself of such aid and cooperation;

23 (5) Direct disbursements from the recovery stimulus fund as provided in sections  
24 108.1000 to 108.1200;

25 (6) Assess or charge a fee for each application it receives for funding for a project  
26 and assess or charge other fees as the board determines to be reasonable to carry out  
27 sections 108.1000 to 108.1200, including, but not limited to, fees or premiums for loans

28 made from the recovery stimulus fund and for loans or bonds secured by the recovery  
29 stimulus fund; and

30 (7) Take such action, enter into such agreements and exercise all other powers and  
31 functions necessary or appropriate to carry out the duties and purposes set forth in  
32 sections 108.1000 to 108.1200.

108.1080. 1. The board may buy, sell, broker and administer any state or federal  
2 tax credits issued in connection with build America bonds or recovery zone bonds.

3 2. Any moneys resulting from any tax credit received, paid to, payable to, or made  
4 available to the board or any development agency from the issuance of bonds under  
5 sections 108.1000 to 108.1200 may be paid, pledged, or credited to and collected,  
6 administered, and disbursed by the board. The board may enter into any contract with  
7 any development agency for the purpose of receiving, collecting, administering, disbursing,  
8 borrowing, or lending money in connection with any tax credit received, paid to, payable  
9 to, or made available to any development agency under the AORTA or sections 108.1000  
10 to 108.1200.

11 3. As an additional subsidy for build America bonds and recovery zone bonds, the  
12 board may authorize state tax credits in an amount not to exceed fifteen percent of the  
13 interest paid on such bonds to the owners thereof. Such state tax credits shall be calculated  
14 and issued in the same manner and at the same time as tax credits issued by the United  
15 States Secretary of the Treasury with respect to build America bonds and recovery zone  
16 bonds. Only bonds issued by December 31, 2010, shall be eligible for such state tax credits.  
17 In no event shall the total amount of state credits authorized by this section exceed three  
18 million seven hundred fifty thousand dollars per fiscal year. Such tax credits shall be  
19 transferable and shall be assignable by the owner of the bonds to the board and the board  
20 shall have the right to sell such tax credits to a third party or to surrender such tax credits  
21 to the state in consideration of a payment by the state of an amount equal to such tax  
22 credits. The board and the office of administration are authorized to enter into an  
23 agreement to evidence the obligation of the state to purchase such tax credits. Prior to the  
24 issuance of any state tax credits under this section the board shall make the following  
25 findings with respect to the project to be financed with the proceeds of the bonds:

26 (1) The project would not be feasible without the issuance of such tax credits;

27 (2) The project will commence construction within six months of the issuance of the  
28 bonds; and

29 (3) The project will result in the immediate creation of jobs and will have a  
30 significant impact on the area in which the project is located.

108.1090. If the board determines that any development agency or qualified  
2 business, which has received a tax credit under subsection 3 of section 108.1080, is not  
3 complying with the requirements of the financing agreement, the board shall, after giving  
4 the development agency or qualified business an opportunity to explain the noncompliance,  
5 notify the department of revenue of the noncompliance and request a penalty. The board  
6 shall state the amount of the penalty, which may not exceed the financial benefit provided  
7 by the board.

108.1100. Sections 108.1000 to 108.1200 shall be construed liberally to effectuate  
2 the purposes hereof. Insofar as the provisions of this law are inconsistent with the  
3 provisions of any other law, the provisions of this law shall be controlling.

108.1110. 1. The department shall allocate recovery zone bonds among the  
2 municipalities with population of more than one hundred thousand and the counties in the  
3 state in the proportion that each such municipality's or county's 2008 employment decline  
4 bears to the aggregate of the 2008 employment declines for all the municipalities and  
5 counties in the state. In the case of a municipality any portion of which is in a county, such  
6 portion shall be treated as part of such municipality and not part of such county.

7 2. Any municipality or county desiring to obtain an allocation in excess of the  
8 amount allocated in subsection 1 of this section shall waive all of its automatic allocation  
9 to the department as provided in this section. In the event a municipality or county elects  
10 not to waive all of its automatic allocation, such municipality or county shall not be eligible  
11 for an allocation from the department from amounts that have been waived by other  
12 municipalities or counties.

13 3. Waivers of allocations shall only be made to the department.

14 4. All waived portions of each allocation may be reallocated by the department in  
15 accordance with section 108.1140.

16 5. The department shall promulgate rules and regulations to implement the  
17 requirements of this section, including deadlines by which each county or municipality  
18 must elect to use or waive an allocation or be deemed to have waived all or a portion of an  
19 allocation.

108.1120. A municipality or county that receives an initial allocation under section  
2 108.1110 shall elect to use or waive such allocation, or any portion thereof, prior to  
3 December first of each year or such date as the department shall determine will best  
4 promote economic development within the state. A municipality or county may elect to use  
5 a portion of the applicable allocation and waive the remainder; provided, however, such  
6 partial waiver shall not entitle the municipality or county to a discretionary reallocation  
7 from the allocation in accordance with section 108.1140. All portions of each allocation

8 which will not be used by the deadline established by the department shall be deemed  
9 waived by the municipality or county in accordance with regulations established by the  
10 department. A county which receives an allocation may reallocate such allocation among  
11 the municipalities within such county in accordance with regulations established by the  
12 department.

108.1130. The maximum aggregate face amount of each type of recovery zone  
2 bonds which may be designated by any development agency shall not exceed the amount  
3 of such recovery zone economic development bond limitation or recovery zone facility bond  
4 limitation allocated to such development agency under section 108.1110 or reallocation to  
5 such development agency under section 108.1140.

108.1140. All waived allocations, or portions of allocations, of recovery zone bonds  
2 shall be subject to reallocation by the department among any eligible development agencies  
3 in the state. Any development agency may apply to the department for reallocation of a  
4 waived allocation in accordance with section 108.1150.

108.1150. 1. Prior to any reallocation of any recovery zone bond allocation, a  
2 development agency shall first make a request for an allocation by filing a signed  
3 application for each project with the department in the form prescribed by the department.  
4 Such applications for allocations shall be considered by the department in accordance with  
5 the provisions of sections 108.1000 to 108.1200 and the standards and procedures  
6 established by the department.

7 2. The department shall establish the procedures and standards for the  
8 determination and approval of projects for the reallocation of waived recovery zone bond  
9 allocations by the promulgation of rules or regulations in accordance with sections  
10 108.1000 to 108.1200 and chapter 536, RSMo. The department may request relevant  
11 information, documentation and other materials and make inquiries as the department  
12 determines necessary or appropriate in connection with any reallocation or project  
13 approval. After a diligent review of relevant materials and completion of its inquiries, the  
14 department may approve or disapprove a reallocation to a development agency.

15 3. The department shall promulgate rules to implement the provisions of sections  
16 108.1000 to 108.1200. Any rule or portion of a rule, as that term is defined in section  
17 536.010, RSMo, that is created under the authority delegated in this section shall become  
18 effective only if it complies with and is subject to all of the provisions of chapter 536,  
19 RSMo, and, if applicable, section 536.028, RSMo. Sections 108.1000 to 108.1200 and  
20 chapter 536, RSMo, are nonseverable and if any of the powers vested with the general  
21 assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove  
22 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking



23 authority and any rule proposed or adopted after August 28, 2009, shall be invalid and  
24 void.

108.1160. 1. For good cause shown, a development agency may request an  
2 extension of the expiration date of an approved recovery zone bond reallocation by filing  
3 a written notice for extension with the director, which request shall be received by the  
4 director not less than five days prior to the expiration of the initial period specified by the  
5 director under sections 108.1140 and 108.1150. In such instances, the director may, in his  
6 or her discretion, approve an extension.

7 2. The director shall notify the development agency within five business days after  
8 receipt if the request for extension has been approved or denied. If the bonds are not  
9 issued on or before the last day of the applicable extension period under this subsection,  
10 the approved allocation shall expire.

11 3. Notwithstanding any other provision of sections 108.1000 to 108.1200, no  
12 extension may be approved that would cause any recovery zone bonds to be issued later  
13 than December 31, 2010.

108.1170. The director shall provide to the development agency on or prior to the  
2 date of issuance of any bonds for which an approved allocation has not expired a  
3 certification that such bonds have received an allocation under the AORTA.

108.1180. If an approved allocation expires, the development agency may resubmit  
2 an application for an allocation for the same project. Such resubmitted application shall  
3 be reviewed in the order of date received with no preference or priority being given as a  
4 result of the prior application for the same project or financing.

108.1190. All development agencies are hereby required to report the amount of  
2 all recovery zone bonds issued to the director no later than the next business day after the  
3 date of issuance of such bonds, which notice shall be confirmed in writing by overnight  
4 delivery service approved by the director, or by certified mail, return receipt requested,  
5 postmarked no later than five calendar days after the issuance of such bonds, such notice  
6 to be in the form prescribed by the director.

108.1195. Failure by a development agency to report in accordance with the  
2 provisions of section 108.1190, or otherwise to abide by the terms of sections 108.1000 to  
3 108.1200, may, at the discretion of the director, result in the forfeiture of future allocations  
4 for recovery zone bonds.

108.1200. 1. The board may borrow money, lend money and issue bonds against  
2 or in anticipation of moneys received or to be received by the board or any development  
3 agency resulting from any tax credit under the AORTA or to sections 108.1000 to 108.1200.

4           **2. The board may declare that each owner of an issue of bonds issued under**  
5 **subsection 1 of this section shall be entitled, in lieu of any other deduction with respect to**  
6 **such bonds, to a tax credit against any tax otherwise due by such owner under the**  
7 **provisions of chapter 143, RSMo, excluding withholding tax imposed by sections 143.191**  
8 **to 143.261, RSMo, chapter 147 or 148, RSMo, in the amount of one hundred percent of the**  
9 **unpaid principal of and unpaid interest on such bonds held by such owner in the taxable**  
10 **year of such owner following the calendar year of the default of the loan by the borrower**  
11 **with respect to the project. The occurrence of a default shall be governed by documents**  
12 **authorizing the issuance of the bonds. The tax credit allowed under this section shall be**  
13 **available to the original owners of the bonds or any subsequent owner or owners thereof.**  
14 **Notwithstanding any provision of Missouri law to the contrary, for any portion of the tax**  
15 **credit to which any owner of a revenue bond or note is entitled under this section which**  
16 **exceeds the total income tax liability of such owner of a revenue bond or note, the director**  
17 **of revenue shall issue a refund to such owner to the extent that the amount of credits**  
18 **allowed in subsection 1 of this section exceed the amount of such owner's income tax. The**  
19 **eligibility of the owner of any revenue bond or note issued under the provisions of**  
20 **subsection 1 of this section for the tax credit provided by this section shall be expressly**  
21 **stated on the face of each such bond or note. The tax credit allowed under this section shall**  
22 **also be available to any financial institution or guarantor which executes any credit facility**  
23 **as security for bonds issued under this section to the same extent as if such financial**  
24 **institution or guarantor were an owner of the bonds, provided however, in such case the**  
25 **tax credits provided by this section shall be available immediately following any default**  
26 **under the agreement between the board and such financial institution. In addition to**  
27 **reimbursing the financial institution or guarantor for claims relating to unpaid principal**  
28 **and interest, such claim may include payment of any unpaid fees imposed by such financial**  
29 **institution or guarantor for use of the credit facility.**

30           **3. Tax credits issued under this section shall be transferable and shall be assignable**  
31 **by the owner of the bonds or the financial institution to the board and the board shall have**  
32 **the right to sell such tax credits to a third party or to surrender such tax credits to the state**  
33 **in consideration of a payment by the state of an amount equal to such tax credits. The**  
34 **board and the department of administration are authorized to enter into an agreement to**  
35 **evidence the obligation of the state to purchase such tax credits.**

36           **4. The proceeds of any bonds issued by the board shall not be used to assist any**  
37 **project unless the board finds and determines that:**

38           **(1) Any project that will be assisted by the proceeds of such bonds would not be**  
39 **feasible without the assistance provided by such bonds;**

40           **(2) Any project that will be assisted by the proceeds of such bonds will result in the**  
41 **immediate creation of jobs and will have a significant impact on the area in which the**  
42 **project is located.**

43           **5. The aggregate principal amount of revenue bonds outstanding at any time with**  
44 **respect to which the tax credit provided in this section shall be available shall not exceed**  
45 **fifty million dollars.**

46           **6. The authority of the board to issue any bonds under this section shall expire on**  
47 **December 31, 2010.**

          Section B. Because of the need to authorize the issuance of build America bonds and  
2 recovery zone bonds resulting from the enactment of the American Recovery and Reinvestment  
3 Act of 2009, section A of this act is deemed necessary for the immediate preservation of the  
4 public health, welfare, peace and safety, and is hereby declared to be an emergency act within  
5 the meaning of the constitution, and section A of this act shall be in full force and effect upon  
6 its passage and approval.

✓