

# HOUSE COMMITTEE BILL NO. 18

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE REHDER.

6736H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 135.352, 135.363, 253.545, 253.550, 253.559, and 620.1900, RSMo, and to enact in lieu thereof seven new sections relating to tax credits, with an emergency clause for certain sections.

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

Section A. Sections 135.352, 135.363, 253.545, 253.550, 253.559, and 620.1900, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 135.352, 135.363, 253.545, 253.550, 253.559, 253.560, and 620.1900, to read as follows:

135.352. 1. A taxpayer owning an interest in a qualified Missouri project shall, subject to the limitations provided under ~~[the provisions of subsection 3 of]~~ this section, be allowed a state tax credit, whether or not allowed a federal tax credit, to be termed the Missouri low-income housing tax credit, if the commission issues an eligibility statement for that project.

2. For qualified Missouri projects placed in service after January 1, 1997, the Missouri low-income housing tax credit available to a project shall be such amount as the commission shall determine is necessary to ensure the feasibility of the project, up to an amount equal to the federal low-income housing tax credit for a qualified Missouri project, for a federal tax period, and such amount shall be subtracted from the amount of state tax otherwise due for the same tax period.

3. **The total amount of tax credits authorized under this section for each fiscal year shall be subject to appropriation. However,** no more than six million dollars in tax credits shall be authorized each fiscal year for projects financed through tax-exempt bond issuance.

4. The Missouri low-income housing tax credit shall be taken against the taxes and in the order specified pursuant to section 32.115. The credit authorized by this section shall not be

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.

16 refundable. Any amount of credit that exceeds the tax due for a taxpayer's taxable year may be  
17 carried back to any of the taxpayer's three prior taxable years or carried forward to any of the  
18 taxpayer's five subsequent taxable years. **A tax credit authorized under this section shall not**  
19 **be transferable.**

20 5. All or any portion of Missouri tax credits issued in accordance with the provisions of  
21 sections 135.350 to 135.362 may be allocated to parties who are eligible pursuant to the  
22 provisions of subsection 1 of this section. Beginning January 1, 1995, for qualified projects  
23 which began on or after January 1, 1994, an owner of a qualified Missouri project shall certify  
24 to the director the amount of credit allocated to each taxpayer. The owner of the project shall  
25 provide to the director appropriate information so that the low-income housing tax credit can be  
26 properly allocated.

27 6. In the event that recapture of Missouri low-income housing tax credits is required  
28 pursuant to subsection 2 of section 135.355, any statement submitted to the director as provided  
29 in this section shall include the proportion of the state credit required to be recaptured, the  
30 identity of each taxpayer subject to the recapture and the amount of credit previously allocated  
31 to such taxpayer.

32 7. **No taxpayer shall, during a single tax year, claim a tax credit authorized under**  
33 **this section and a tax credit authorized under section 253.550 if such credits were issued**  
34 **for the same property.**

35 8. The director of the department may promulgate rules and regulations necessary to  
36 administer the provisions of this section. No rule or portion of a rule promulgated pursuant to  
37 the authority of this section shall become effective unless it has been promulgated pursuant to  
38 the provisions of section 536.024.

135.363. ~~1. All or any portion of tax credits issued in accordance with the provisions  
2 of sections 135.350 to 135.363 may be transferred, sold or assigned to parties who are eligible  
3 under the provisions of subsection 1 of section 135.352.~~

~~4 2. Beginning January 1, 1995, for qualified projects which began on or after January 1,  
5 1994, an owner or transferee desiring to make a transfer, sale or assignment as described in  
6 subsection 1 of this section shall submit to the director of the department of revenue a statement  
7 which describes the amount of credit for which such transfer, sale or assignment of credit is  
8 eligible. The owner shall provide to the director of revenue appropriate information so that the  
9 low-income housing tax credit can be properly allocated.~~

~~10 3. In the event that recapture of Missouri low-income housing tax credits is required  
11 pursuant to subsection 2 of section 135.355, any statement submitted to the director of the  
12 department of revenue as provided in this section shall include the proportion of the state credit~~

13 required to be recaptured, the identity of each transferee subject to recapture and the amount of  
 14 credit previously transferred to such transferee.

15 ~~4. The director of the department of revenue may prescribe rules and regulations~~  
 16 ~~necessary for the administration of the provisions of this section.] Under section 23.253 of the~~  
 17 **Missouri sunset act:**

18 **(1) The provisions of the program authorized under sections 135.350 to 135.363**  
 19 **shall automatically sunset on December thirty-first six years after the effective date of this**  
 20 **section unless reauthorized by an act of the general assembly;**

21 **(2) If such program is reauthorized, the program authorized under sections 135.350**  
 22 **to 135.363 shall automatically sunset on December thirty-first twelve years after the**  
 23 **effective date of the reauthorization of this section; and**

24 **(3) Sections 135.350 to 135.363 shall terminate on September first of the calendar**  
 25 **year immediately following the calendar year in which the program authorized under**  
 26 **sections 135.350 to 135.363 is sunset.**

253.545. As used in sections 253.545 to [253.559] **253.560**, the following terms mean,  
 2 unless the context requires otherwise:

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

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

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

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

11 (5) "Principal", a managing partner, general partner, or president of a taxpayer;

12 (6) **"Projected net fiscal benefit", the total net fiscal benefit to the state or**  
 13 **municipality, less any state or local benefits offered to the taxpayer for a project, as**  
 14 **determined by the department of economic development;**

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

19 ~~(7)~~ (8) "Taxpayer", any person, firm, partnership, trust, estate, limited liability  
 20 company, or corporation.

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. The total amount of tax credits authorized under this section for each fiscal year**  
14 **shall be subject to appropriation.** During the period beginning on January 1, 2010, but ending  
15 on or after June 30, 2010, the department of economic development shall not approve  
16 applications for tax credits under the provisions of subsections ~~[3]~~ 4 and ~~[8]~~ 9 of section 253.559  
17 which, in the aggregate, exceed seventy million dollars, increased by any amount of tax credits  
18 for which approval shall be rescinded under the provisions of section 253.559. For each fiscal  
19 year beginning on or after July 1, 2010, **but ending before July 1, 2018**, the department of  
20 economic development shall not approve applications for tax credits under the provisions of  
21 subsections ~~[3]~~ 4 and ~~[8]~~ 9 of section 253.559 which, in the aggregate, exceed one hundred forty  
22 million dollars, increased by any amount of tax credits for which approval shall be rescinded  
23 under the provisions of section 253.559. **For each fiscal year beginning on or after July 1,**  
24 **2018, the department of economic development shall not approve applications for tax**  
25 **credits under the provisions of subsections 4 and 9 of section 253.559 that, in the aggregate,**  
26 **exceed fifty million dollars, increased by any amount of tax credits for which approval**  
27 **shall be rescinded under the provisions of section 253.559.** The limitations provided under  
28 this subsection shall not apply to applications approved under the provisions of subsection ~~[3]~~  
29 4 of section 253.559 for projects to receive less than two hundred seventy-five thousand dollars  
30 in tax credits.

31       3. For all applications for tax credits approved on or after January 1, 2010, no more than  
32 two hundred fifty thousand dollars in tax credits may be issued for eligible costs and expenses  
33 incurred in the rehabilitation of an eligible property which is a nonincome producing  
34 single-family, owner-occupied residential property and is either a certified historic structure or  
35 a structure in a certified historic district.

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

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

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

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

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

50 **5. No taxpayer shall, during a single tax year, claim a tax credit authorized under**  
 51 **this section and a tax credit authorized under section 135.352 if such credits were issued**  
 52 **for the same property.**

253.559. 1. To obtain approval for tax credits allowed under sections 253.545 to  
 2 ~~[253.559]~~ **253.560**, a taxpayer shall submit an application for tax credits to the department of  
 3 economic development. Each application for approval, including any applications received for  
 4 supplemental allocations of tax credits as provided under subsection 8 of this section, shall be  
 5 prioritized for review and approval, in the order of the date on which the application was  
 6 postmarked, with the oldest postmarked date receiving priority. Applications postmarked on the  
 7 same day shall go through a lottery process to determine the order in which such applications  
 8 shall be reviewed.

9 2. Each application shall be reviewed by the department of economic development for  
 10 approval. In order to receive approval, an application, other than applications submitted under  
 11 the provisions of subsection ~~[8]~~ **9** of this section, shall include:

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

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

20 (3) The estimated cost of rehabilitation, the anticipated total costs of the project, the  
 21 actual basis of the property, as shown by proof of actual acquisition costs, the anticipated total  
 22 labor costs, the estimated project start date, and the estimated project completion date;

23 (4) Proof that the property is an eligible property and a certified historic structure or a  
 24 structure in a certified historic district; ~~and~~

25 (5) **Proof of committed and unconditional financing. For purposes of this**  
 26 **subdivision, financing conditions that are commonly imposed under generally accepted**  
 27 **underwriting principles shall not be deemed a violation of "unconditional financing";**

28 (6) **A copy of all land use and building approvals reasonably necessary for the**  
 29 **commencement of the project; and**

30 (7) Any other information which the department of economic development may  
 31 reasonably require to review the project for approval.

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

42 **3. In evaluating an application for tax credits submitted under this section, the**  
 43 **department of economic development shall consider:**

44 (1) **The amount of projected net fiscal benefit of the project to the state and local**  
 45 **municipality and the period in which the state and municipality would realize such net**  
 46 **fiscal benefit;**

47 (2) **The overall size and quality of the proposed project, including the estimated**  
 48 **number of new jobs to be created by the project, the potential multiplier effect of the**  
 49 **project, and similar factors;**

50 (3) **The level of economic distress in the area; and**

51 (4) **Input from the local municipality in which the proposed project is located as to**  
 52 **the importance of the proposed project to the municipality.**

53 **4.** If the department of economic development deems the application sufficient, the  
 54 taxpayer shall be notified in writing of the approval for an amount of tax credits equal to the  
 55 amount provided under section 253.550 less any amount of tax credits previously approved.

56 Such approvals shall be granted to applications in the order of priority established under this  
57 section and shall require full compliance thereafter with all other requirements of law as a  
58 condition to any claim for such credits. **If the department of economic development**  
59 **disapproves an application, the taxpayer shall be notified in writing of the reasons for such**  
60 **disapproval. A disapproved application may be resubmitted.**

61 ~~[4-]~~ 5. Following approval of an application, the identity of the taxpayer contained in  
62 such application shall not be modified except:

63 (1) The taxpayer may add partners, members, or shareholders as part of the ownership  
64 structure, so long as the principal remains the same, provided however, that subsequent to the  
65 commencement of renovation and the expenditure of at least ten percent of the proposed  
66 rehabilitation budget, removal of the principal for failure to perform duties and the appointment  
67 of a new principal thereafter shall not constitute a change of the principal; or

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

70 ~~[5-]~~ 6. In the event that the department of economic development grants approval for tax  
71 credits equal to the total amount available under subsection 2 of section 253.550, or sufficient  
72 that when totaled with all other approvals, the amount available under subsection 2 of section  
73 253.550 is exhausted, all taxpayers with applications then awaiting approval or thereafter  
74 submitted for approval shall be notified by the department of economic development that no  
75 additional approvals shall be granted during the fiscal year and shall be notified of the priority  
76 given to such taxpayer's application then awaiting approval. Such applications shall be kept on  
77 file by the department of economic development and shall be considered for approval for tax  
78 credits in the order established in this section in the event that additional credits become  
79 available due to the rescission of approvals or when a new fiscal year's allocation of credits  
80 becomes available for approval.

81 ~~[6-]~~ 7. All taxpayers with applications receiving approval on or after the effective date  
82 of this act shall commence rehabilitation within ~~[two years]~~ **nine months** of the date of issuance  
83 of the letter from the department of economic development granting the approval for tax credits.  
84 "Commencement of rehabilitation" shall mean that as of the date in which actual physical work,  
85 contemplated by the architectural plans submitted with the application, has begun, the taxpayer  
86 has incurred no less than ten percent of the estimated costs of rehabilitation provided in the  
87 application. Taxpayers with approval of a project shall submit evidence of compliance with the  
88 provisions of this subsection. If the department of economic development determines that a  
89 taxpayer has failed to comply with the requirements provided under this section, the approval  
90 for the amount of tax credits for such taxpayer shall be rescinded and such amount of tax credits  
91 shall then be included in the total amount of tax credits, provided under subsection 2 of section

92 253.550, from which approvals may be granted. Any taxpayer whose approval shall be subject  
 93 to rescission shall be notified of such from the department of economic development and, upon  
 94 receipt of such notice, may submit a new application for the project.

95 ~~[7-]~~ **8.** To claim the credit authorized under sections 253.550 to ~~[253.559]~~ **253.560**, a  
 96 taxpayer with approval shall apply for final approval and issuance of tax credits from the  
 97 department of economic development which, in consultation with the department of natural  
 98 resources, shall determine the final amount of eligible rehabilitation costs and expenses and  
 99 whether the completed rehabilitation meets the standards of the Secretary of the United States  
 100 Department of the Interior for rehabilitation as determined by the state historic preservation  
 101 officer of the Missouri department of natural resources. For financial institutions credits  
 102 authorized pursuant to sections 253.550 to 253.561 shall be deemed to be economic development  
 103 credits for purposes of section 148.064. The approval of all applications and the issuing of  
 104 certificates of eligible credits to taxpayers shall be performed by the department of economic  
 105 development. The department of economic development shall inform a taxpayer of final  
 106 approval by letter and shall issue, to the taxpayer, tax credit certificates. The taxpayer shall  
 107 attach the certificate to all Missouri income tax returns on which the credit is claimed.

108 ~~[8-]~~ **9.** Except as expressly provided in this subsection, tax credit certificates shall be  
 109 issued in the final year that costs and expenses of rehabilitation of the project are incurred, or  
 110 within the twelve-month period immediately following the conclusion of such rehabilitation.  
 111 In the event the amount of eligible rehabilitation costs and expenses incurred by a taxpayer  
 112 would result in the issuance of an amount of tax credits in excess of the amount provided under  
 113 such taxpayer's approval granted under subsection ~~[3]~~ **4** of this section, such taxpayer may apply  
 114 to the department for issuance of tax credits in an amount equal to such excess. Applications for  
 115 issuance of tax credits in excess of the amount provided under a taxpayer's application shall be  
 116 made on a form prescribed by the department. Such applications shall be subject to all  
 117 provisions regarding priority provided under subsection 1 of this section.

118 ~~[9-]~~ **10.** The department of economic development shall determine, on an annual basis,  
 119 the overall economic impact to the state from the rehabilitation of eligible property.

**253.560. Under section 23.253 of the Missouri sunset act:**

2 **(1) The provisions of the program authorized under sections 253.545 to 253.560**  
 3 **shall automatically sunset on December thirty-first six years after the effective date of this**  
 4 **section unless reauthorized by an act of the general assembly;**

5 **(2) If such program is reauthorized, the program authorized under sections 253.545**  
 6 **to 253.560 shall automatically sunset on December thirty-first twelve years after the**  
 7 **effective date of the reauthorization of this section; and**

8           **(3) Sections 253.545 to 253.560 shall terminate on September first of the calendar**  
9 **year immediately following the calendar year in which the program authorized under**  
10 **sections 253.545 to 253.560 is sunset.**

620.1900. 1. The department of economic development may charge a fee to the recipient  
2 of any tax credits issued by the department[;] in an amount up to two and one-half percent of the  
3 amount of tax credits issued **or, for tax credits issued under sections 253.545 to 253.560, in**  
4 **an amount equal to four percent of the amount of tax credits issued.** The fee shall be paid  
5 by the recipient upon the issuance of the tax credits. However, no fee shall be charged for the  
6 tax credits issued under section 135.460, or section 208.770, or under sections 32.100 to 32.125,  
7 if issued for community services, crime prevention, education, job training, or physical  
8 revitalization.

9           2. [AH] **(1)** Fees received by the department of economic development under this section  
10 shall be deposited solely to the credit of the economic development advancement fund, created  
11 under subsection 3 of this section.

12           **(2) Thirty-seven and one-half percent of the revenue derived from the four percent**  
13 **fee charged on tax credits issued under sections 253.545 to 253.560 shall be appropriated**  
14 **from the economic development advancement fund for business recruitment and**  
15 **marketing.**

16           3. There is hereby created in the state treasury the "Economic Development  
17 Advancement Fund", which shall consist of money collected under this section. The state  
18 treasurer shall be custodian of the fund and shall approve disbursements from the fund in  
19 accordance with sections 30.170 and 30.180. Upon appropriation, money in the fund shall be  
20 used solely for the administration of this section. Notwithstanding the provisions of section  
21 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not  
22 revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the  
23 fund in the same manner as other funds are invested. Any interest and moneys earned on such  
24 investments shall be credited to the fund.

25           4. Such fund shall consist of any fees charged under subsection 1 of this section, any  
26 gifts, contributions, grants, or bequests received from federal, private, or other sources, fees or  
27 administrative charges from private activity bond allocations, moneys transferred or paid to the  
28 department in return for goods or services provided by the department, and any appropriations  
29 to the fund.

30           5. At least fifty percent of the fees and other moneys deposited in the fund shall be  
31 appropriated for marketing, technical assistance, and training, contracts for specialized economic  
32 development services, and new initiatives and pilot programming to address economic trends.

33 The remainder may be appropriated toward the costs of staffing and operating expenses for the  
34 program activities of the department of economic development, and for accountability functions.

Section B. Because of the need to provide for the preservation of historic buildings, the  
2 repeal and reenactment of sections 253.545, 253.550, and 253.559 of section A of this act is  
3 deemed necessary for the immediate preservation of the public health, welfare, peace, and safety  
4 and is hereby declared to be an emergency act within the meaning of the constitution, and the  
5 repeal and reenactment of sections 253.545, 253.550, and 253.559 of section A of this act shall  
6 be in full force and effect upon its passage and approval.

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