

FIRST REGULAR SESSION

# SENATE BILL NO. 258

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Read 1st time February 10, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1362S.011

## AN ACT

To repeal sections 253.550, 253.557, and 253.559, RSMo, and to enact in lieu thereof three new sections relating to the historic preservation tax credit program.

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

Section A. Sections 253.550, 253.557, and 253.559, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 253.550,  
3 253.557, and 253.559, to read as follows:

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

16 2. During the period beginning on January 1, 2010, but ending on or after  
17 June 30, 2010, the department of economic development shall not approve  
18 applications for tax credits under the provisions of subsections 3 and 8 of section

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

19 253.559 which, in the aggregate, exceed seventy million dollars, increased by any  
20 amount of tax credits for which approval shall be rescinded under the provisions  
21 of section 253.559. For each fiscal year beginning on or after July 1, 2010, **but**  
22 **ending on or before June 30, 2012**, the department of economic development  
23 shall not approve applications for tax credits under the provisions of subsections  
24 3 and 8 of section 253.559 which, in the aggregate, exceed one hundred forty  
25 million dollars, increased by any amount of tax credits for which approval shall  
26 be rescinded under the provisions of section 253.559. The limitations provided  
27 under this subsection shall not apply to applications approved under the  
28 provisions of subsection 3 of section 253.559 for projects to receive less than two  
29 hundred seventy-five thousand dollars in tax credits.

30 3. For all applications for tax credits approved on or after January 1,  
31 2010, **but before June 30, 2012**, no more than two hundred fifty thousand  
32 dollars in tax credits may be issued for eligible costs and expenses incurred in the  
33 rehabilitation of an eligible property which is a nonincome producing  
34 single-family, owner-occupied residential property and is either a certified historic  
35 structure or a structure in a certified historic district.

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

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

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

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

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

52 5. **For each fiscal year beginning on or after July 1, 2012, the**  
53 **department of economic development shall not approve applications for**  
54 **tax credits under the provisions of subsections 3 and 8 of section**

55 253.559 which, in the aggregate, exceed seventy-five million dollars,  
56 increased by any amount of tax credits for which approval shall be  
57 rescinded under the provisions of section 253.559.

58         **6. For all applications for tax credits approved on or after July**  
59 **1, 2012, no more than fifty thousand dollars in tax credits may be issued**  
60 **for eligible costs and expenses incurred in the rehabilitation of an**  
61 **eligible property which is a nonincome producing single-family,**  
62 **owner-occupied residential property and is either a certified historic**  
63 **structure or a structure in a certified historic district. For purposes of**  
64 **this subsection, "eligible property" shall not include any property with**  
65 **a purchase price in excess of one hundred fifty thousand dollars.**

66         **7. In lieu of the limitations on tax credit authorization provided**  
67 **under the provisions of subsections 5 and 6 of this section, the**  
68 **limitations on tax credit authorization provided under the provisions**  
69 **of subsections 2 and 3 of this section shall apply to:**

70           **(1) Any application submitted by a taxpayer, which has received**  
71 **approval from the department prior to July 1, 2012; or**

72           **(2) Any taxpayer applying for tax credits, provided under this**  
73 **section, which, on or before January 1, 2012, has filed an application**  
74 **with the department evidencing that such taxpayer:**

75           **(a) Has incurred costs and expenses for an eligible property**  
76 **which exceed the lesser of fifteen percent of the total project costs or**  
77 **three million dollars and received an approved Part I from the**  
78 **Secretary of the United States Department of Interior; or**

79           **(b) Has received certification, by the state historic preservation**  
80 **officer, that the rehabilitation plan meets the standards consistent with**  
81 **the standards of the Secretary of the United States Department of the**  
82 **Interior, and the rehabilitation costs and expenses associated with such**  
83 **rehabilitation shall exceed fifty percent of the total basis in the**  
84 **property.**

253.557. 1. If the amount of such credit exceeds the total tax liability for  
2 the year in which the rehabilitated property is placed in service, the amount that  
3 exceeds the state tax liability may be carried back to any of the three preceding  
4 years and carried forward for credit against the taxes imposed pursuant to  
5 chapter 143 and chapter 148, except for sections 143.191 to 143.265 for the  
6 succeeding ten years, or until the full credit is used, whichever occurs  
7 first. Not-for-profit entities, including but not limited to corporations organized

8 as not-for-profit corporations pursuant to chapter 355 shall be ineligible for the  
9 tax credits authorized under sections 253.545 [through 253.561] to  
10 **253.559. Any taxpayer that receives tax credits under the provisions of**  
11 **sections 135.350 to 135.363 or sections 135.475 to 135.487 shall be**  
12 **ineligible for the tax credits authorized under sections 253.545 to**  
13 **253.559 for the same project.** Taxpayers eligible for such tax credits may  
14 transfer, sell or assign the credits. Credits granted to a partnership, a limited  
15 liability company taxed as a partnership or multiple owners of property shall be  
16 passed through to the partners, members or owners respectively pro rata or  
17 pursuant to an executed agreement among the partners, members or owners  
18 documenting an alternate distribution method.

19 2. The assignee of the tax credits, hereinafter the assignee for purposes  
20 of this subsection, may use acquired credits to offset up to one hundred percent  
21 of the tax liabilities otherwise imposed pursuant to chapter 143 and chapter 148,  
22 except for sections 143.191 to 143.265. The assignor shall perfect such transfer  
23 by notifying the department of economic development in writing within thirty  
24 calendar days following the effective date of the transfer and shall provide any  
25 information as may be required by the department of economic development to  
26 administer and carry out the provisions of this section.

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

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

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

18 is in the process of acquiring fee simple ownership, proof of site control shall  
19 include an executed sales contract or an executed option to purchase the eligible  
20 property;

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

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

28 (4) Proof that the property is an eligible property and a certified historic  
29 structure or a structure in a certified historic district; and

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

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

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

51 (1) The taxpayer may add partners, members, or shareholders as part of  
52 the ownership structure, so long as the principal remains the same, provided  
53 however, that subsequent to the commencement of renovation and the

54 expenditure of at least ten percent of the proposed rehabilitation budget, removal  
55 of the principal for failure to perform duties and the appointment of a new  
56 principal thereafter shall not constitute a change of the principal; or

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

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

72 6. All taxpayers with applications receiving approval on or after the  
73 effective date of this act shall commence rehabilitation within two years of the  
74 date of issuance of the letter from the department of economic development  
75 granting the approval for tax credits. "Commencement of rehabilitation" shall  
76 mean that as of the date in which actual physical work, contemplated by the  
77 architectural plans submitted with the application, has begun, the taxpayer has  
78 incurred no less than ten percent of the estimated costs of rehabilitation provided  
79 in the application. Taxpayers with approval of a project shall submit evidence of  
80 compliance with the provisions of this subsection. If the department of economic  
81 development determines that a taxpayer has failed to comply with the  
82 requirements provided under this section, the approval for the amount of tax  
83 credits for such taxpayer shall be rescinded and such amount of tax credits shall  
84 then be included in the **applicable** total amount of tax credits, provided under  
85 subsection 2 **or** 5 of section 253.550, from which approvals may be granted. Any  
86 taxpayer whose approval shall be subject to rescission shall be notified of such  
87 from the department of economic development and, upon receipt of such notice,  
88 may submit a new application for the project.

89 7. To claim the credit authorized under sections 253.550 to 253.559, a

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

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

116       9. The department of economic development shall determine, on an annual  
117 basis, the overall economic impact to the state from the rehabilitation of eligible  
118 property.

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