

FIRST REGULAR SESSION

SENATE BILL NO. 411

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1717S.021

AN ACT

To repeal sections 99.975, 100.286, and 100.297, RSMo, and to enact in lieu thereof four new sections relating to the Missouri Development Finance Board, with an emergency clause for certain sections.

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

Section A. Sections 99.975, 100.286, and 100.297, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 99.975, 100.273,
3 100.286, and 100.297, to read as follows:

99.975. 1. No new applications made pursuant to sections 99.915 to
2 99.980 shall be approved **by the Missouri development finance board** after
3 **[January 1, 2013] August 28, 2011.**

4 2. No applications made pursuant to sections 99.915 to 99.980 shall be
5 approved prior to August 28, 2003, except for applications for projects that are
6 located within a county for which public and individual assistance has been
7 requested by the governor pursuant to section 401 of the Robert T. Stafford
8 Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq., for an
9 emergency proclaimed by the governor pursuant to section 44.100 due to a
10 natural disaster of major proportions that occurred after May 1, 2003, but prior
11 to May 10, 2003, and the development project area is a central business district
12 that sustained severe damage as a result of such natural disaster, as determined
13 by the state emergency management agency.

14 3. Prior to December 31, 2006, the Missouri development finance board
15 may approve up to two applications made pursuant to sections 99.915 to 99.980
16 in a home rule city with more than four hundred thousand inhabitants and
17 located in more than one county in which the state sales tax increment for such

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

18 projects approved pursuant to the provisions of this subsection shall be up to
19 one-half of the incremental increase in all sales taxes levied pursuant to section
20 144.020. In no event shall the incremental increase include any amounts
21 attributable to retail sales unless the Missouri development finance board and the
22 department of economic development are satisfied based on information provided
23 by the municipality or authority, and such entities have made a finding that a
24 substantial portion of all but a de minimus portion of the sales tax increment
25 attributable to retail sales is from new sources which did not exist in the state
26 during the baseline year. The incremental increase for an existing facility shall
27 be the amount of all state sales taxes generated pursuant to section 144.020 at
28 the facility in excess of the amount of all state sales taxes generated pursuant to
29 section 144.020 at the facility in the baseline year. The incremental increase in
30 development project areas where the baseline year is the year following the year
31 in which the development project is approved by the municipality pursuant to
32 subdivision (2) of section 99.918 shall be the state sales tax revenue generated by
33 out-of-state businesses relocating into a development project area. The
34 incremental increase for a Missouri facility which relocates to a development
35 project area shall be the amount by which the state sales tax revenue of the
36 facility exceeds the state sales tax revenue for the facility in the calendar year
37 prior to relocation.

**100.273. 1. Any person employed by the Missouri development
2 finance board on or after September 1, 2011, in a full-time position shall
3 be both a state employee and a member of the Missouri state employees'
4 retirement system, except that such state employee shall not have
5 coverage under Missouri consolidated health care plan, unless such
6 coverage is requested by the Missouri development finance board and
7 approved by the board of trustees of the Missouri consolidated health
8 care plan.**

**9 2. Employees described in subsection 1 of this section may not
10 purchase and receive creditable or credited service in the Missouri
11 state employees' retirement system for prior full-time service with the
12 Missouri development finance board except as provided in subsection
13 7 of section 105.691. Employees may purchase and receive such
14 creditable or credited service at any time on or after September 1, 2011,
15 and may do so notwithstanding any vesting requirement to the
16 contrary. Any employee who purchases such creditable or credited**

17 **service and subsequently terminates employment prior to becoming**
18 **vested in the system may, upon proper application, receive a refund**
19 **equal to the purchase amount.**

100.286. 1. Within the discretion of the board, the development and
2 reserve fund, the infrastructure development fund or the export finance fund may
3 be pledged to secure the payment of any bonds or notes issued by the board, or
4 to secure the payment of any loan made by the board or a participating lender
5 which loan:

- 6 (1) Is requested to finance any project or export trade activity;
- 7 (2) Is requested by a borrower who is demonstrated to be financially
8 responsible;
- 9 (3) Can reasonably be expected to provide a benefit to the economy of this
10 state;
- 11 (4) Is otherwise secured by a mortgage or deed of trust on real or personal
12 property or other security satisfactory to the board; provided that loans to finance
13 export trade activities may be secured by export accounts receivable or
14 inventories of exportable goods satisfactory to the board;
- 15 (5) Does not exceed five million dollars;
- 16 (6) Does not have a term longer than five years if such loan is made to
17 finance export trade activities; and
- 18 (7) Is, when used to finance export trade activities, made to small or
19 medium size businesses or agricultural businesses, as may be defined by the
20 board.

21 2. The board shall prescribe standards for the evaluation of the financial
22 condition, business history, and qualifications of each borrower and the terms and
23 conditions of loans which may be secured, and may require each application to
24 include a financial report and evaluation by an independent certified public
25 accounting firm, in addition to such examination and evaluation as may be
26 conducted by any participating lender.

27 3. Each application for a loan secured by the development and reserve
28 fund, the infrastructure development fund or the export finance fund shall be
29 reviewed in the first instance by any participating lender to whom the application
30 was submitted. If satisfied that the standards prescribed by the board are met
31 and that the loan is otherwise eligible to be secured by the development and
32 reserve fund, the infrastructure development fund or the export finance fund, the
33 participating lender shall certify the same and forward the application for final

34 approval to the board.

35 4. The securing of any loans by the development and reserve fund, the
36 infrastructure development fund or the export finance fund shall be conditioned
37 upon approval of the application by the board, and receipt of an annual reserve
38 participation fee, as prescribed by the board, submitted by or on behalf of the
39 borrower.

40 5. The securing of any loan by the export finance fund for export trade
41 activities shall be conditioned upon the board's compliance with any applicable
42 treaties and international agreements, such as the general agreement on tariffs
43 and trade and the subsidies code, to which the United States is then a party.

44 6. Any taxpayer, including any charitable organization that is exempt
45 from federal income tax and whose Missouri unrelated business taxable income,
46 if any, would be subject to the state income tax imposed under chapter 143, may,
47 subject to the limitations provided under subsection 8 of this section, receive a tax
48 credit against any tax otherwise due under the provisions of chapter 143,
49 excluding withholding tax imposed by sections 143.191 to 143.261, chapter 147,
50 or chapter 148, in the amount of fifty percent of any amount contributed in money
51 or property by the taxpayer to the development and reserve fund, the
52 infrastructure development fund or the export finance fund during the taxpayer's
53 tax year, provided, however, the total tax credits awarded in any calendar year
54 beginning after January 1, 1994, shall not be the greater of ten million dollars or
55 five percent of the average growth in general revenue receipts in the preceding
56 three fiscal years. This limit may be exceeded only upon joint agreement by the
57 commissioner of administration, the director of the department of economic
58 development, and the director of the department of revenue that such action is
59 essential to ensure retention or attraction of investment in Missouri. If the board
60 receives, as a contribution, real property, the contributor at such contributor's
61 own expense shall have two independent appraisals conducted by appraisers
62 certified by the Master Appraisal Institute. Both appraisals shall be submitted
63 to the board, and the tax credit certified by the board to the contributor shall be
64 based upon the value of the lower of the two appraisals. The board shall not
65 certify the tax credit until the property is deeded to the board. Such credit shall
66 not apply to reserve participation fees paid by borrowers under sections 100.250
67 to 100.297. The portion of earned tax credits which exceeds the taxpayer's tax
68 liability may be carried forward for up to five years.

69 7. Notwithstanding any provision of law to the contrary, any taxpayer

70 may sell, assign, exchange, convey or otherwise transfer tax credits allowed in
71 subsection 6 of this section under the terms and conditions prescribed in
72 subdivisions (1) and (2) of this subsection. Such taxpayer, hereinafter the
73 assignor for the purpose of this subsection, may sell, assign, exchange or
74 otherwise transfer earned tax credits:

75 (1) For no less than seventy-five percent of the par value of such credits;
76 and

77 (2) In an amount not to exceed one hundred percent of annual earned
78 credits. The taxpayer acquiring earned credits, hereinafter the assignee for the
79 purpose of this subsection, may use the acquired credits to offset up to one
80 hundred percent of the tax liabilities otherwise imposed by chapter 143, excluding
81 withholding tax imposed by sections 143.191 to 143.261, chapter 147, or chapter
82 148. Unused credits in the hands of the assignee may be carried forward for up
83 to five years, provided all such credits shall be claimed within ten years following
84 the tax years in which the contribution was made. The assignor shall enter into
85 a written agreement with the assignee establishing the terms and conditions of
86 the agreement and shall perfect such transfer by notifying the board in writing
87 within thirty calendar days following the effective day of the transfer and shall
88 provide any information as may be required by the board to administer and carry
89 out the provisions of this section. Notwithstanding any other provision of law to
90 the contrary, the amount received by the assignor of such tax credit shall be
91 taxable as income of the assignor, and the excess of the par value of such credit
92 over the amount paid by the assignee for such credit shall be taxable as income
93 of the assignee.

94 8. Provisions of subsections 1 to 7 of this section to the contrary
95 notwithstanding, no more than ten million dollars in tax credits provided under
96 this section, may be authorized or approved annually. The limitation on tax
97 credit authorization and approval provided under this subsection may be exceeded
98 only upon mutual agreement, evidenced by a signed and properly notarized letter,
99 by the commissioner of the office of administration, the director of the department
100 of economic development, and the director of the department of revenue that such
101 action is essential to ensure retention or attraction of investment in Missouri
102 provided, however, that in no case shall more than twenty-five million dollars in
103 tax credits be authorized or approved during such year. Taxpayers shall file,
104 with the board, an application for tax credits authorized under this section on a
105 form provided by the board. The provisions of this subsection shall not be

106 construed to limit or in any way impair the ability of the board to authorize tax
107 credits for issuance for projects authorized or approved, by a vote of the board,
108 on or before the thirtieth day following the effective date of this act, or a
109 taxpayer's ability to redeem such tax credits. **No tax credits authorized**
110 **under the provisions of this section shall be authorized for issuance**
111 **during the sixty-month period beginning on the effective date of this**
112 **section.**

100.297. 1. The board may authorize a tax credit, as described in this
2 section, to the owner of any revenue bonds or notes issued by the board pursuant
3 to the provisions of sections 100.250 to 100.297, for infrastructure facilities as
4 defined in subdivision (9) of section 100.255, if, prior to the issuance of such
5 bonds or notes, the board determines that:

6 (1) The availability of such tax credit is a material inducement to the
7 undertaking of the project in the state of Missouri and to the sale of the bonds or
8 notes;

9 (2) The loan with respect to the project is adequately secured by a first
10 deed of trust or mortgage or comparable lien, or other security satisfactory to the
11 board.

12 2. Upon making the determinations specified in subsection 1 of this
13 section, the board may declare that each owner of an issue of revenue bonds or
14 notes shall be entitled, in lieu of any other deduction with respect to such bonds
15 or notes, to a tax credit against any tax otherwise due by such owner pursuant
16 to the provisions of chapter 143, excluding withholding tax imposed by sections
17 143.191 to 143.261, chapter 147, or chapter 148, in the amount of one hundred
18 percent of the unpaid principal of and unpaid interest on such bonds or notes
19 held by such owner in the taxable year of such owner following the calendar year
20 of the default of the loan by the borrower with respect to the project. The
21 occurrence of a default shall be governed by documents authorizing the issuance
22 of the bonds. The tax credit allowed pursuant to this section shall be available
23 to the original owners of the bonds or notes or any subsequent owner or owners
24 thereof. Once an owner is entitled to a claim, any such tax credits shall be
25 transferable as provided in subsection 7 of section 100.286. Notwithstanding any
26 provision of Missouri law to the contrary, any portion of the tax credit to which
27 any owner of a revenue bond or note is entitled pursuant to this section which
28 exceeds the total income tax liability of such owner of a revenue bond or note
29 shall be carried forward and allowed as a credit against any future taxes imposed

30 on such owner within the next ten years pursuant to the provisions of chapter
31 143, excluding withholding tax imposed by sections 143.191 to 143.261, chapter
32 147, or chapter 148. The eligibility of the owner of any revenue bond or note
33 issued pursuant to the provisions of sections 100.250 to 100.297 for the tax credit
34 provided by this section shall be expressly stated on the face of each such bond
35 or note. The tax credit allowed pursuant to this section shall also be available
36 to any financial institution or guarantor which executes any credit facility as
37 security for bonds issued pursuant to this section to the same extent as if such
38 financial institution or guarantor was an owner of the bonds or notes, provided
39 however, in such case the tax credits provided by this section shall be available
40 immediately following any default of the loan by the borrower with respect to the
41 project. In addition to reimbursing the financial institution or guarantor for
42 claims relating to unpaid principal and interest, such claim may include payment
43 of any unpaid fees imposed by such financial institution or guarantor for use of
44 the credit facility.

45 3. The aggregate principal amount of revenue bonds or notes outstanding
46 at any time with respect to which the tax credit provided in this section shall be
47 available shall not exceed fifty million dollars.

48 **4. No tax credits authorized under the provisions of this section**
49 **shall be authorized for issuance during the sixty-month period**
50 **beginning on the effective date of this section.**

Section B. Due to the need to ensure adequate state funding for necessary
2 services provided by the state, sections 100.297 and 100.286 of this act are
3 deemed necessary for the immediate preservation of the public health, welfare,
4 peace and safety, and is hereby declared to be an emergency act within the
5 meaning of the constitution, and sections 100.297 and 100.286 of this act shall be
6 in full force and effect upon its passage and approval.

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