

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 112

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Section 135.680, RSMo, is repealed and one new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

4 135.680. 1. As used in subsections 1 to 4 of this section,
5 the following terms shall mean:

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

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

9 (b) The following fraction:

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

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

18 c. For purposes of calculating the amount of qualified
19 low-income community investments held by an issuer, an investment

1 shall be considered held by an issuer even if the investment has
2 been sold or repaid; provided that the issuer reinvests an amount
3 equal to the capital returned to or recovered by the issuer from
4 the original investment, exclusive of any profits realized, in
5 another qualified low-income community investment within twelve
6 months of the receipt of such capital. An issuer shall not be
7 required to reinvest capital returned from qualified low-income
8 community investments after the sixth anniversary of the issuance
9 of the qualified equity investment, the proceeds of which were
10 used to make the qualified low-income community investment, and
11 the qualified low-income community investment shall be considered
12 held by the issuer through the seventh anniversary of the
13 qualified equity investment's issuance;

14 (2) "Applicable percentage", zero percent for each of the
15 first two credit allowance dates, seven percent for the third
16 credit allowance date, and eight percent for the next four credit
17 allowance dates;

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

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

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

24 (4) "Long-term debt security", any debt instrument issued
25 by a qualified community development entity, at par value or a
26 premium, with an original maturity date of at least seven years
27 from the date of its issuance, with no acceleration of repayment,
28 amortization, or prepayment features prior to its original

1 maturity date, and with no distribution, payment, or interest
2 features related to the profitability of the qualified community
3 development entity or the performance of the qualified community
4 development entity's investment portfolio. The foregoing shall
5 in no way limit the holder's ability to accelerate payments on
6 the debt instrument in situations where the issuer has defaulted
7 on covenants designed to ensure compliance with this section or
8 Section 45D of the Internal Revenue Code of 1986, as amended;

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

16 (6) "Qualified community development entity", the meaning
17 given such term in Section 45D of the Internal Revenue Code of
18 1986, as amended; provided that such entity has entered into an
19 allocation agreement with the Community Development Financial
20 Institutions Fund of the U.S. Treasury Department with respect to
21 credits authorized by Section 45D of the Internal Revenue Code of
22 1986, as amended, which includes the state of Missouri within the
23 service area set forth in such allocation agreement;

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

27 (a) Is acquired after September 4, 2007, but before July 1,
28 2010, at its original issuance solely in exchange for cash;

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

4 (c) Is designated by the issuer as a qualified equity
5 investment under this subdivision and is certified by the
6 department of economic development as not exceeding the
7 limitation contained in subsection 2 of this section. This term
8 shall include any qualified equity investment that does not meet
9 the provisions of paragraph (a) of this subdivision if such
10 investment was a qualified equity investment in the hands of a
11 prior holder;

12 (8) "Qualified low-income community investment", any
13 capital or equity investment in, or loan to, any qualified active
14 low-income community business. With respect to any one qualified
15 active low-income community business, the maximum amount of
16 qualified low-income community investments made in such business,
17 on a collective basis with all of its affiliates, that may be
18 used from the calculation of any numerator described in
19 subparagraph a. of paragraph (b) of subdivision (1) of this
20 subsection shall be ten million dollars whether issued to one or
21 several qualified community development entities;

22 (9) "Tax credit", a credit against the tax otherwise due
23 under chapter 143, excluding withholding tax imposed in sections
24 143.191 to 143.265, or otherwise due under section 375.916 or
25 chapter 147, 148, or 153;

26 (10) "Taxpayer", any individual or entity subject to the
27 tax imposed in chapter 143, excluding withholding tax imposed in
28 sections 143.191 to 143.265, or the tax imposed in section

1 375.916 or chapter 147, 148, or 153.

2 2. A taxpayer that makes a qualified equity investment
3 earns a vested right to tax credits under this section. On each
4 credit allowance date of such qualified equity investment the
5 taxpayer, or subsequent holder of the qualified equity
6 investment, shall be entitled to a tax credit during the taxable
7 year including such credit allowance date. The tax credit amount
8 shall be equal to the applicable percentage of the adjusted
9 purchase price paid to the issuer of such qualified equity
10 investment. The amount of the tax credit claimed shall not
11 exceed the amount of the taxpayer's state tax liability for the
12 tax year for which the tax credit is claimed. No tax credit
13 claimed under this section shall be refundable or transferable.
14 Tax credits earned by a partnership, limited liability company,
15 S-corporation, or other pass-through entity may be allocated to
16 the partners, members, or shareholders of such entity for their
17 direct use in accordance with the provisions of any agreement
18 among such partners, members, or shareholders. Any amount of tax
19 credit that the taxpayer is prohibited by this section from
20 claiming in a taxable year may be carried forward to any of the
21 taxpayer's five subsequent taxable years. The department of
22 economic development shall limit the monetary amount of qualified
23 equity investments permitted under this section to a level
24 necessary to limit tax credit utilization at no more than
25 twenty-five million dollars of tax credits in any fiscal year.
26 Such limitation on qualified equity investments shall be based on
27 the anticipated utilization of credits without regard to the
28 potential for taxpayers to carry forward tax credits to later tax

1 years.

2 3. The issuer of the qualified equity investment shall
3 certify to the department of economic development the anticipated
4 dollar amount of such investments to be made in this state during
5 the first twelve-month period following the initial credit
6 allowance date. If on the second credit allowance date, the
7 actual dollar amount of such investments is different than the
8 amount estimated, the department of economic development shall
9 adjust the credits arising on the second allowance date to
10 account for such difference.

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

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

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

23 5. The department of economic development shall promulgate
24 rules to implement the provisions of this section, including
25 recapture provisions on a scaled proportional basis, and to
26 administer the allocation of tax credits issued for qualified
27 equity investments, which shall be conducted on a first-come,
28 first-serve basis. Any rule or portion of a rule, as that term

1 is defined in section 536.010, that is created under the
2 authority delegated in this section shall become effective only
3 if it complies with and is subject to all of the provisions of
4 chapter 536 and, if applicable, section 536.028. This section
5 and chapter 536 are nonseverable and if any of the powers vested
6 with the general assembly pursuant to chapter 536 to review, to
7 delay the effective date, or to disapprove and annul a rule are
8 subsequently held unconstitutional, then the grant of rulemaking
9 authority and any rule proposed or adopted after September 4,
10 2007, shall be invalid and void.

11 6. [For fiscal years following fiscal year 2010, qualified
12 equity investments shall not be made under this section unless
13 reauthorization is made pursuant to this subsection. For all
14 fiscal years following fiscal year 2010, unless the general
15 assembly adopts a concurrent resolution granting authority to the
16 department of economic development to approve qualified equity
17 investments for the Missouri new markets development program and
18 clearly describing the amount of tax credits available for the
19 next fiscal year, or otherwise complies with the provisions of
20 this subsection, no qualified equity investments may be permitted
21 to be made under this section. The amount of available tax
22 credits contained in such a resolution shall not exceed the
23 limitation provided under subsection 2 of this section. In any
24 year in which the provisions of this section shall sunset
25 pursuant to subsection 7 of this section, reauthorization shall
26 be made by general law and not by concurrent resolution. Nothing
27 in this subsection shall preclude a taxpayer who makes a
28 qualified equity investment prior to the expiration of authority

1 to make qualified equity investments from claiming tax credits
2 relating to such qualified equity investment for each applicable
3 credit allowance date.

4 7. Under section 23.253 of the Missouri sunset act:

5 (1) The provisions of the new program authorized under this
6 section shall automatically sunset six years after September 4,
7 2007, unless reauthorized by an act of the general assembly; and

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

11 (3) This section shall terminate on September first of the
12 calendar year immediately following the calendar year in which
13 the program authorized under this section is sunset. However,
14 nothing in this subsection shall preclude a taxpayer who makes a
15 qualified equity investment prior to sunset of this section under
16 the provisions of section 23.253 from claiming tax credits
17 relating to such qualified equity investment for each credit
18 allowance date.] Subsections 1 to 5 of this section shall apply
19 to qualified equity investments made after September 4, 2007, but
20 before July 1, 2010. Subsections 5 to 14 shall apply to
21 qualified equity investments made after the effective date of
22 this act.

23 7. As used in subsections 6 to 14 of this section, the
24 following terms shall mean:

25 (1) "Applicable percentage", zero percent for each of the
26 first two credit allowance dates, eleven percent for the next two
27 credit allowance dates, and twelve percent for the next three
28 credit allowance dates;

1 (2) "Credit allowance date", with respect to any qualified
2 equity investment:

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

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

7 (3) "Long-term debt security", any debt instrument issued
8 by a qualified community development entity, at par value or a
9 premium, with an original maturity date of at least seven years
10 from the date of its issuance, with no acceleration of repayment,
11 amortization, or prepayment features prior to its original
12 maturity date. The qualified community development entity that
13 issues the debt instrument shall not make cash interest payments
14 on the debt instrument during the period beginning on the date of
15 issuance and ending on the final credit allowance date in an
16 amount that exceeds the cumulative operating income, as defined
17 by regulations adopted under Section 45D, Internal Revenue Code
18 of 1986, as amended, of the qualified community development
19 entity for that period prior to giving effect to the expense of
20 such cash interest payments. The foregoing shall in no way limit
21 the holder's ability to accelerate payments on the debt
22 instrument in situations where the issuer has defaulted on
23 covenants designed to ensure compliance with this section or
24 Section 45D of the Internal Revenue Code of 1986, as amended;

25 (4) "Purchase price", the amount paid to the issuer of a
26 qualified equity investment for such qualified equity investment;

27 (5) "Qualified active low-income community business", the
28 meaning given such term in Section 45D of the Internal Revenue

1 Code of 1986, as amended, and 26 C.F.R. Sec. 1.45D-1, but limited
2 to those businesses meeting the Small Business Administration
3 size eligibility standards established in 13 C.F.R. 121.101-201
4 at the time the qualified low income community investment is
5 made. A business shall be considered a qualified active low-
6 income community business for the duration of the qualified
7 community development entity's investment in, or loan to, the
8 business if the entity reasonably expects, at the time it makes
9 the investment or loan, that the business will continue to
10 satisfy the requirements for being a qualified active low-income
11 community business, other than the Small Business Administration
12 size standards, throughout the entire period of the investment or
13 loan. The term shall include businesses located in a federally
14 designated natural disaster area if such disaster occurred on or
15 after 2010 and the census tract containing the business has seen
16 an average reduction in the assessed value of improvements to
17 commercial, industrial, or residential real estate of at least
18 twenty-five percent as a direct result of the event that resulted
19 in the disaster declaration, provided that such business meets
20 all of the other provisions of this section, except being located
21 in a low-income census tract. Any business that derives or
22 projects to derive fifteen percent or more of its annual revenue
23 from the rental or sale of real estate shall not be considered to
24 be a qualified active low-income community business. This
25 exclusion does not apply to a business that is controlled by, or
26 under common control with, another business if the second
27 business:

28 (a) Does not derive or project to derive fifteen percent or

1 more of its annual revenue from the rental or sale of real
2 estate; and

3 (b) Is the primary tenant of the real estate leased from
4 the first business;

5 (6) "Qualified community development entity", the meaning
6 given such term in Section 45D of the Internal Revenue Code of
7 1986, as amended; provided that such entity has entered into, for
8 the current year or any prior year, an allocation agreement with
9 the Community Development Financial Institutions Fund of the U.S.
10 Treasury Department with respect to credits authorized by Section
11 45D of the Internal Revenue Code of 1986, as amended, which
12 includes the state of Missouri within the service area set forth
13 in such allocation agreement. The term shall include subsidiary
14 community development entities of any such qualified community
15 development entity. The term shall not include banks with a
16 principal place of business outside of this state;

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

20 (a) Is acquired after the effective date of this act, at
21 its original issuance solely in exchange for cash;

22 (b) Has at least eighty-five percent of its cash purchase
23 price used by the issuer to make qualified low-income community
24 investments by the first anniversary of the initial credit
25 allowance date; and

26 (c) Is designated by the issuer as a qualified equity
27 investment under this subdivision and is certified by the
28 department of economic development as not exceeding the

1 limitation contained in subsection 8 of this section. This term
2 shall include any qualified equity investment that does not meet
3 the provisions of paragraph (a) of this subdivision if such
4 investment was a qualified equity investment in the hands of a
5 prior holder;

6 (8) "Qualified low-income community investment", any
7 capital or equity investment in, or loan to, any qualified active
8 low-income community business;

9 (9) "Tax credit", a credit against the tax otherwise due
10 under chapter 143, excluding withholding tax imposed in sections
11 143.191 to 143.265, or otherwise due under section 375.916 or
12 chapter 147, 148, or 153;

13 (10) "Taxpayer", any individual or entity subject to the
14 tax imposed in chapter 143, excluding withholding tax imposed in
15 sections 143.191 to 143.265, or the tax imposed in section
16 375.916 or chapter 147, 148, or 153.

17 8. Any entity that makes a qualified equity investment
18 earns a vested right to tax credits under this section. On each
19 credit allowance date of such qualified equity investment the
20 entity, or subsequent holder of the qualified equity investment,
21 shall be entitled to a tax credit during the taxable year
22 including such credit allowance date. The tax credit amount
23 shall be equal to the applicable percentage of the purchase price
24 paid to the issuer of such qualified equity investment. The
25 amount of the tax credit claimed shall not exceed the amount of
26 the taxpayer's state tax liability for the tax year for which the
27 tax credit is claimed. No tax credit claimed under this section
28 shall be refundable or saleable on the open market. Tax credits

1 earned by a partnership, limited liability company, S-
2 corporation, or other pass-through entity may be allocated to the
3 partners, members, or shareholders of such entity for their
4 direct use in accordance with the provisions of any agreement
5 among such partners, members, or shareholders. Any amount of tax
6 credit that the taxpayer is prohibited by this section from
7 claiming in a taxable year may be carried forward to any of the
8 taxpayer's five subsequent taxable years. The department of
9 economic development shall limit the monetary amount of qualified
10 equity investments permitted under this section to a level
11 necessary to limit tax credit utilization at no more than twenty-
12 five million dollars of tax credits in any fiscal year. Such
13 limitation on qualified equity investments shall be based on the
14 anticipated utilization of credits without regard to the
15 potential for taxpayers to carry forward tax credits to later tax
16 years.

17 9. The issuer of the qualified equity investment shall
18 certify to the department of economic development the anticipated
19 dollar amount of such investments to be made in this state during
20 the first twelve-month period following the initial credit
21 allowance date. If on the second credit allowance date, the
22 actual dollar amount of such investments is different than the
23 amount estimated, the department of economic development shall
24 adjust the credits arising on the second allowance date to
25 account for such difference.

26 10. The department of economic development shall recapture
27 the tax credit allowed under this section with respect to such
28 qualified equity investment under this section if:

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

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

10 (3) The issuer fails to invest an amount equal to eighty-
11 five percent of the purchase price of the qualified equity
12 investment in qualified low-income community investments in
13 Missouri within twelve months of the issuance of the qualified
14 equity investment and maintain at least eighty-five percent of
15 such level of investment in qualified low-income community
16 investments in Missouri until the last credit allowance date for
17 the qualified equity investment. For purposes of this section,
18 an investment shall be considered held by an issuer even if the
19 investment has been sold or repaid if the issuer reinvests an
20 amount equal to the capital returned to or recovered by the
21 issuer from the original investment, exclusive of any profits
22 realized, in another qualified low-income community investment
23 within twelve months of the receipt of such capital. An issuer
24 shall not be required to reinvest capital returned from qualified
25 low-income community investments after the earlier of:

26 (a) The sixth anniversary of the issuance of the qualified
27 equity investment, the proceeds of which were used to make the
28 qualified low-income community investment; or

1 (b) The date by which a qualified community development
2 entity has made qualified low income community investments with
3 the proceeds of such qualified equity investment on a cumulative
4 basis equal to at least one hundred and fifty percent of such
5 proceeds.

6
7 If the requirements of either paragraph (a) or (b) of this
8 subdivision are met, the qualified low-income community
9 investment shall be considered held by the issuer through the
10 seventh anniversary of the qualified equity investment's
11 issuance; or

12 (4) At any time prior to the final credit allowance date of
13 a qualified equity investment the issuer uses the cash proceeds
14 of such qualified equity investment to make qualified low-income
15 community investments in any one qualified active low-income
16 community business, including affiliated qualified active low-
17 income community business, exclusive of reinvestments of capital
18 returned or repaid with respect to earlier investments in such
19 qualified active low-income community business and its
20 affiliates, in excess of twenty-five percent of such cash
21 proceeds.

22
23 No recapture shall occur until the qualified community
24 development entity shall have been given notice of noncompliance
25 and afforded six months from the date of such notice to cure the
26 noncompliance.

27 11. A qualified community development entity that seeks to
28 have an equity investment or long-term debt security designated

1 as a qualified equity investment and eligible for tax credits
2 under this section shall pay a fee in the amount of one-half of
3 one percent of the amount of the equity investment or long-term
4 debt security requested to be designated as a qualified equity
5 investment to the department of economic development for deposit
6 in the new markets performance guarantee fund established by
7 subsection 12 of this section. The entity shall forfeit the fee
8 in its entirety if the qualified community development entity or
9 any subsidiary qualified community development entity that issues
10 a qualified equity investment certified under this section fails
11 to invest an amount equal to eighty-five percent of the purchase
12 price of the qualified equity investment in qualified low-income
13 community investments in Missouri within twelve months of the
14 issuance of the qualified equity investment. The entity shall
15 have six months from the date of notice of compliance with this
16 requirement to cure this noncompliance. The fee shall be held in
17 the new markets performance guarantee fund until such time as
18 compliance with the provisions of this subsection shall have been
19 established. The qualified community development entity may
20 request a refund of the fee from the department no sooner than
21 thirty days after meeting the requirements of this subsection.
22 The department shall have thirty days to comply with such request
23 or give notice of noncompliance.

24 12. There is hereby created in the state treasury the "New
25 Markets Performance Guarantee Fund", which shall consist of money
26 collected under subsection 11 of this section. The state
27 treasurer shall be custodian of the fund. In accordance with
28 sections 30.170 and 30.180, the state treasurer may approve

1 disbursements. The fund shall be a dedicated fund and, upon
2 appropriation, money in the fund shall be used solely for the
3 administration of this section. Notwithstanding the provisions
4 of section 33.080, to the contrary, any moneys remaining in the
5 fund at the end of the biennium shall not revert to the credit of
6 the general revenue fund. The state treasurer shall invest
7 moneys in the fund in the same manner as other funds are
8 invested. Any interest and moneys earned on such investments
9 shall be credited to the fund.

10 13. (1) Once a qualified equity investment is designated
11 as such by the department of economic development the investment
12 shall be deemed "bound". A qualified equity investment may not
13 be unbound unless all of the requirements of subdivision (2) of
14 this subsection have been met. Until all qualified equity
15 investments issued by a qualified community development entity
16 are unbound under this subsection, the qualified community
17 development entity shall not be entitled to distribute to its
18 equity holders or make cash payments on long-term debt securities
19 that have been designated as qualified equity investments in an
20 amount that exceeds the sum of:

21 (a) The cumulative operating income, as defined by
22 regulations adopted under Section 45D, Internal Revenue Code of
23 1986, as amended, earned by the qualified community development
24 entity since issuance of the qualified equity investment, prior
25 to giving effect to any expense from the payment of interest on
26 long-term debt securities designated as qualified equity

1 investments; and

2 (b) Fifty percent of the purchase price of the qualified
3 equity investments issued by the qualified community development
4 entity.

5 (2) To be unbound, a qualified equity investment shall:

6 (a) Be beyond its seventh credit allowance date;

7 (b) Have been in compliance with subsection 10 of this
8 section up through its seventh credit allowance date; and

9 (c) Have had its proceeds invested in qualified active low
10 income community investments such that the total qualified active
11 low income community investments made, cumulatively including
12 reinvestments, exceeds one hundred and fifty percent of its
13 qualified equity investment.

14 (3) A community development entity that seeks to have a
15 qualified equity investment unbound under this section shall send
16 notice to the department of economic development of its request
17 to be unbound along with evidence supporting the request. The
18 qualified equity investment shall be deemed to have been in
19 compliance with subsection 10 of this section if no recapture
20 action has been commenced by the department of economic
21 development as of the seventh credit allowance date. Such
22 request shall not be unreasonably denied and shall be responded
23 to within thirty days of receiving the request. If the request
24 is denied for any reason, the burden of proof shall be on the
25 department in any administrative or legal proceeding that
26 follows.

1 14. No qualified community development entity shall be
2 entitled to pay to any affiliate of such qualified community
3 development entity any fees in connection with any activity under
4 this section prior to the being unbound under subsection 13 of
5 this section of all qualified equity investments issued by such
6 qualified community development entity. A qualified community
7 development entity is not prohibited from allocating or
8 distributing income earned by it to such affiliates or paying
9 reasonable interest on amounts lent to the qualified community
10 development entity by such affiliates.

11 15. Pursuant to section 23.253 of the Missouri sunset act:

12 (1) The provisions of the new program authorized under
13 subsections 6 to 14 of this section shall sunset automatically
14 six years after the effective date of this act, unless
15 reauthorized by an act of the general assembly; and

16 (2) If such program is reauthorized, the program authorized
17 under subsections 6 to 14 of this section shall sunset
18 automatically twelve years after the effective date of the
19 reauthorization of subsections 6 to 14 of this section; and

20 (3) Subsections 6 to 14 of this section shall terminate on
21 September first of the calendar year immediately following the
22 calendar year in which the program authorized under subsections 6
23 to 14 of this section is sunset.

24 Section B. Because immediate action is necessary to
25 encourage economic development in the state, section A of this
26 act is deemed necessary for the immediate preservation of the

1 public health, welfare, peace and safety, and is hereby declared
2 to be an emergency act within the meaning of the constitution,
3 and section A of this act shall be in full force and effect upon
4 its passage and approval.

5