

FIRST REGULAR SESSION

SENATE BILL NO. 379

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS KEAVENY, CURLS, SIFTON, JUSTUS, AND HOLSMAN.

Read 1st time February 26, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1473S.02I

AN ACT

To repeal section 99.1205, RSMo, and to enact in lieu thereof one new section relating to the distressed areas land assemblage tax credit act.

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

Section A. Section 99.1205, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 99.1205, to read as follows:

99.1205. 1. This section shall be known and may be cited as the
2 "Distressed Areas Land Assemblage Tax Credit Act".

3 2. As used in this section, the following terms mean:

4 (1) "Acquisition costs", the purchase price for the eligible parcel, costs of
5 environmental assessments, closing costs, real estate brokerage fees, reasonable
6 demolition costs of vacant structures **or any portion thereof, together with**
7 **engineering costs, surveying costs, title insurance, and architectural**
8 **and design costs incurred in connection with acquisition, financing,**
9 **parcel consolidation or site and redevelopment area planning**
10 **regarding one or more eligible parcels**, and reasonable maintenance costs
11 incurred to maintain an acquired eligible parcel for a period of [five] **twelve**
12 years after the acquisition of such eligible parcel. Acquisition costs shall not
13 include costs for [title insurance and survey,] attorney's fees, relocation costs,
14 fines, or bills from a municipality;

15 (2) "Applicant", any person, firm, partnership, trust, limited liability
16 company, or corporation which has:

17 (a) Incurred, within an eligible project area, acquisition costs for the
18 acquisition of land sufficient to satisfy the requirements under subdivision (8) of
19 this subsection; and

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

20 (b) Been appointed or selected, pursuant to a redevelopment agreement
21 by a municipal authority, as a redeveloper or similar designation, under an
22 economic incentive law, to redevelop an urban renewal area or a redevelopment
23 area that includes all of an eligible project area or whose redevelopment plan or
24 redevelopment area, which encompasses all of an eligible project area, has been
25 approved or adopted under an economic incentive law. In addition to being
26 designated the redeveloper, the applicant shall have been designated to receive
27 economic incentives only after the municipal authority has considered the amount
28 of the tax credits in adopting such economic incentives as provided in subsection
29 8 of this section **unless such economic incentives were approved for an**
30 **eligible project area qualified as such under subparagraph c. of**
31 **paragraph (b) of subdivision (8) of this subsection.** The redevelopment
32 agreement shall provide that[:

33 a.] the funds generated through the use or sale of the tax credits issued
34 under this section shall be used to redevelop the eligible project area[;

35 b.]. **Additionally, except for projects in eligible project areas**
36 **qualified as such under subparagraph c. of paragraph (b) of**
37 **subdivision (8) of this subsection, the redevelopment agreement shall**
38 **provide that:**

39 a. No more than seventy-five percent of the urban renewal area identified
40 in the urban renewal plan or the redevelopment area identified in the
41 redevelopment plan may be redeveloped by the applicant; and

42 [c.] b. The remainder of the urban renewal area or the redevelopment
43 area shall be redeveloped by co-redevelopers or redevelopers to whom the
44 applicant has assigned its redevelopment rights and obligations under the urban
45 renewal plan or the redevelopment plan;

46 (3) "Certificate", a tax credit certificate issued under this section;

47 (4) "Condemnation proceedings", any action taken by, or on behalf of, an
48 applicant to initiate an action in a court of competent jurisdiction to use the
49 power of eminent domain to acquire a parcel within the eligible project
50 area. Condemnation proceedings shall include any and all actions taken after the
51 submission of a notice of intended acquisition to an owner of a parcel within the
52 eligible project area by a municipal authority or any other person or entity under
53 section 523.250;

54 (5) "Department", the Missouri department of economic development;

55 (6) "Economic incentive laws", any provision of Missouri law pursuant to

56 which economic incentives are provided to redevelopers of a parcel or parcels to
57 redevelop the land, such as tax abatement or payments in lieu of taxes, or
58 redevelopment plans or redevelopment projects approved or adopted which
59 include the use of economic incentives to redevelop the land. Economic incentive
60 laws include, but are not limited to, the land clearance for redevelopment
61 authority law under sections 99.300 to 99.660, the real property tax increment
62 allocation redevelopment act under sections 99.800 to 99.865, the Missouri
63 downtown and rural economic stimulus act under sections 99.915 to 99.1060, and
64 the downtown revitalization preservation program under sections 99.1080 to
65 99.1092;

66 (7) "Eligible parcel", a parcel:

67 (a) Which is located within an eligible project area;

68 (b) Which is to be redeveloped;

69 (c) On which the applicant has not commenced construction prior to
70 November 28, 2007;

71 (d) Which has been acquired **either directly by the applicant, or on**
72 **behalf of the applicant through one or more affiliated companies**
73 **controlled by the applicant or under common ownership with the**
74 **applicant;**

75 (e) **Which has been acquired** without the commencement of any
76 condemnation proceedings with respect to such parcel brought by or on behalf of
77 the applicant. Any parcel acquired **before August 28, 2007**, by the applicant
78 from a municipal authority shall not constitute an eligible parcel; and

79 [(e)] (f) On which all outstanding taxes, fines, and bills levied by
80 municipal governments that were levied by the municipality during the time
81 period that the applicant held title to the eligible parcel have been paid in full;

82 (8) "Eligible project area", an area which shall have satisfied the following
83 requirements:

84 (a) The eligible project area shall consist of at least seventy-five acres and
85 may include parcels within its boundaries that do not constitute an eligible
86 parcel;

87 (b) At least eighty percent of the eligible project area shall be located
88 within:

89 a. A Missouri qualified census tract area, as designated by the United
90 States Department of Housing and Urban Development under 26 U.S.C. Section
91 42[, or within]; or

92 **b. A distressed community as that term is defined in section 135.530; or**
93 **c. A redevelopment area as that term is defined in section 99.805**
94 **under the real property tax increment allocation redevelopment act**
95 **that:**

96 **(i) Contains at least three hundred acres of real property;**

97 **(ii) Includes or previously included in excess of one million**
98 **square feet of commercial building space;**

99 **(iii) Contains eighty or more parcels; and**

100 **(iv) Is located within a low-income community as defined by 26**
101 **U.S.C. Section 45D as of January 1, 2011;**

102 (c) The eligible parcels acquired by the applicant within the eligible
103 project area shall total at least fifty acres, which may consist of contiguous and
104 noncontiguous parcels, **but shall not include any parcel acquired by the**
105 **applicant from a municipal authority. Any applicant applying for**
106 **credits for costs incurred within an eligible project area qualified as**
107 **such under subparagraph c. of paragraph (b) of this subdivision shall**
108 **own, either directly by the applicant, or on behalf of the applicant**
109 **through one or more affiliated companies controlled by the applicant**
110 **or under common ownership with the applicant, at least one hundred**
111 **fifty contiguous acres of real property, which may be separated by the**
112 **width of public right-of-way, within the urban renewal area or**
113 **redevelopment area containing such eligible project area;**

114 (d) **Other than in eligible project areas qualified as such under**
115 **subparagraph c. of paragraph (b) of this subdivision,** the average number
116 of parcels per acre in an eligible project area shall be four or more;

117 (e) Less than five percent of the acreage within the boundaries of the
118 eligible project area shall consist of owner-occupied residences which the
119 applicant has identified for acquisition under the urban renewal plan or the
120 redevelopment plan pursuant to which the applicant was appointed or selected
121 as the redeveloper or by which the person or entity was qualified as an applicant
122 under this section on the date of the approval or adoption of such plan;

123 (9) "Interest costs", interest, loan fees, and closing costs. Interest costs
124 shall not include attorney's fees, **any of which relate to or arise out of loans**
125 **relating to acquisition costs, including without limitation, interest, loan**
126 **fees and closing costs associated with the refinancing of loans relating**
127 **to acquisition costs;**

128 (10) "Maintenance costs", costs of boarding up and securing vacant
129 structures, costs of removing trash, and costs of cutting grass and weeds;

130 (11) "Municipal authority", any city, town, village, county, public body
131 corporate and politic, political subdivision, or land trust of this state established
132 and authorized to own land within the state;

133 (12) "Municipality", any city, town, village, or county;

134 (13) "Parcel", a single lot or tract of land, and the improvements thereon,
135 owned by, or recorded as the property of, one or more persons or entities;

136 (14) "Redeveloped", the process of undertaking and carrying out a
137 redevelopment plan or urban renewal plan pursuant to which the conditions
138 which provided the basis for an eligible project area to be included in a
139 redevelopment plan or urban renewal plan are to be reduced or eliminated by
140 redevelopment or rehabilitation; and

141 (15) "Redevelopment agreement", the redevelopment agreement or similar
142 agreement into which the applicant entered with a municipal authority and which
143 is the agreement for the implementation of the urban renewal plan or
144 redevelopment plan pursuant to which the applicant was appointed or selected
145 as the redeveloper or by which the person or entity was qualified as an applicant
146 under this section; and such appointment or selection shall have been approved
147 by an ordinance of the governing body of the municipality, or municipalities, or
148 in the case of any city not within a county, the board of aldermen, in which the
149 eligible project area is located. The redevelopment agreement shall include a
150 time line for redevelopment of the eligible project area. The redevelopment
151 agreement shall state that the named developer shall be subject to the provisions
152 of chapter 290.

153 **3. Subject to the limitations provided in subsection 7 of this**
154 **section**, any applicant shall be entitled to a tax credit against the taxes imposed
155 under chapters 143, 147, and 148, except for sections 143.191 to 143.265, in an
156 amount equal to fifty percent of the acquisition costs; **except that, the tax**
157 **credit for reasonable demolition costs shall be in an amount equal to**
158 **one hundred percent of such costs**, and one hundred percent of the interest
159 costs incurred for a period of [five] **twelve** years after the acquisition of an
160 eligible parcel. [No tax credits shall be issued under this section until after
161 January 1, 2008.]

162 4. If the amount of such tax credit exceeds the total tax liability for the
163 year in which the applicant is entitled to receive a tax credit, the amount that

164 exceeds the state tax liability may be carried forward for credit against the taxes
165 imposed under chapters 143, 147, and 148 for the succeeding six years, or until
166 the full credit is used, whichever occurs first. The applicant shall not be entitled
167 to a tax credit for taxes imposed under sections 143.191 to 143.265. Applicants
168 entitled to receive such tax credits may transfer, sell, or assign the tax
169 credits. Tax credits granted to a partnership, a limited liability company taxed
170 as a partnership, or multiple owners of property shall be passed through to the
171 partners, members, or owners respectively pro rata or pursuant to an executed
172 agreement among the partners, members, or owners documenting an alternate
173 distribution method.

174 5. A purchaser, transferee, or assignee of the tax credits authorized under
175 this section may use acquired tax credits to offset up to one hundred percent of
176 the tax liabilities otherwise imposed under chapters 143, 147, and 148, except for
177 sections 143.191 to 143.265. A seller, transferor, or assignor shall perfect such
178 transfer by notifying the department in writing within thirty calendar days
179 following the effective date of the transfer and shall provide any information as
180 may be required by the department to administer and carry out the provisions of
181 this section.

182 6. To claim tax credits authorized under this section, an applicant shall
183 submit to the department an application for a certificate. An applicant shall
184 identify the boundaries of the eligible project area in the application. The
185 department shall verify that the applicant has submitted a valid application in
186 the form and format required by the department. The department shall verify
187 that the municipal authority held the requisite hearings and gave the requisite
188 notices for such hearings in accordance with the applicable economic incentive
189 act, and municipal ordinances. On [an annual] a **quarterly** basis, an applicant
190 may file for the tax credit for the acquisition costs, and for the tax credit for the
191 interest costs, subject to the limitations of this section. If an applicant applying
192 for the tax credit meets the criteria required under this section, the department
193 shall issue a certificate in the appropriate amount. If an applicant receives a tax
194 credit for maintenance costs as a part of the applicant's acquisition costs, the
195 department shall post on its internet website the amount and type of
196 maintenance costs and a description of the redevelopment project for which the
197 applicant received a tax credit within thirty days after the department issues the
198 certificate to the applicant.

199 7. The total aggregate amount of tax credits authorized under this section

200 **after August 28, 2013**, shall not exceed ninety-five million dollars. At no time
201 shall the annual amount of the tax credits issued under this section exceed
202 **[twenty] thirty** million dollars. If the tax credits that are to be issued under this
203 section exceed, in any year, the **[twenty] thirty** million dollar limitation, the
204 department shall either:

205 (1) Issue tax credits to the applicant in the amount of **[twenty] thirty**
206 million dollars, if there is only one applicant entitled to receive tax credits in that
207 year; or

208 (2) **(a)** Issue the tax credits **[on a pro rata basis]** to all applicants entitled
209 to receive tax credits in that year **as provided in this subdivision. The**
210 **department shall determine on an ongoing basis during the course of**
211 **each calendar year the amount of tax credits that have been issued to**
212 **each applicant for each eligible project area during such year, and the**
213 **amount of tax credits remaining available for issuance with respect to**
214 **such calendar year, if any.**

215 **(b)** Applicants applying for tax credits with respect to projects
216 located in eligible project areas qualified as such under subparagraph
217 **c. of paragraph (b) of subdivision (8) of subsection 2 of this section shall**
218 **not, in the aggregate, be issued tax credits in excess of fifty percent of**
219 **the annual thirty million dollar limitation with respect to such**
220 **calendar year. If more than one applicant qualifies for issuance of tax**
221 **credits under the preceding sentence in a given calendar year, such tax**
222 **credits shall be issued on a pro rata basis. Applicants applying for tax**
223 **credits with respect to projects located in any other eligible project**
224 **areas shall not, in the aggregate, be issued tax credits in excess of fifty**
225 **percent of the annual thirty million dollar limitation with respect to**
226 **such calendar year. If more than one applicant qualifies for issuance**
227 **of tax credits under the preceding sentence in a given calendar year,**
228 **such tax credits shall be issued on a pro rata basis.**

229 **(c)** In the event that the department determines, as of December
230 **thirty-first of a given calendar year, that the full amount of tax credits**
231 **available for such calendar year under paragraph (b) of this**
232 **subdivision with respect to projects located in eligible project areas**
233 **qualified as such under subparagraph c. of paragraph (b) of subdivision**
234 **(8) of subsection 2 of this section, was not issued, then the department**
235 **shall make available for allocation to qualifying applicants with respect**
236 **to projects located in any other eligible project areas the unissued**

237 amount of such tax credits. In the event that the department
238 determines, as of December thirty-first of a given calendar year, that
239 the full amount of tax credits available for such calendar year under
240 paragraph (b) of this subdivision with respect to projects not located
241 in eligible project areas qualified as such under subparagraph c. of
242 paragraph (b) of subdivision (8) of subsection 2 of this section, was not
243 issued, then the department shall make available for allocation to
244 qualifying applicants with respect to projects located in eligible project
245 areas which qualified as such under subparagraph c. of paragraph (b)
246 of subdivision (8) of subsection 2 of this section, the unissued amount
247 of such tax credits.

248 (d) Any amount of tax credits, which an applicant is, or applicants are,
249 entitled to receive on an annual basis and are not issued due to the [twenty]
250 thirty million dollar limitation, shall be carried forward for the benefit of the
251 applicant or applicants to subsequent years.

252 No tax credits provided under this section shall be authorized after August 28,
253 [2013] 2019. Any tax credits which have been authorized on or before August 28,
254 [2013] 2019, but not issued, may be issued, subject to the limitations provided
255 under this subsection, until all such authorized tax credits have been issued.

256 8. Upon issuance of any tax credits pursuant to this section, the
257 department shall report to the municipal authority the applicant's name and
258 address, the parcel numbers of the eligible parcels for which the tax credits were
259 issued, the itemized acquisition costs and interest costs for which tax credits were
260 issued, and the total value of the tax credits issued. The municipal authority and
261 the state shall not consider the amount of the tax credits as an applicant's cost,
262 but shall include [the] issued tax credits in any subsequent sources and uses
263 and cost benefit analysis reviewed or created for the purpose of awarding other
264 economic incentives. The amount of the tax credits shall not be considered an
265 applicant's cost in the evaluation of the amount of any award of any other
266 economic incentives, but shall be considered in measuring the reasonableness of
267 the rate of return to the applicant with respect to such award of other economic
268 incentives. The municipal authority shall provide the report to any relevant
269 commission, board, or entity responsible for the evaluation and recommendation
270 or approval of other economic incentives to assist in the redevelopment of the
271 eligible project area. Tax credits authorized under this section shall constitute
272 redevelopment tax credits, as such term is defined under section 135.800, and

273 shall be subject to all provisions applicable to redevelopment tax credits provided
274 under sections 135.800 to 135.830.

275 9. The department may promulgate rules to implement the provisions of
276 this section. Any rule or portion of a rule, as that term is defined in section
277 536.010, that is created under the authority delegated in this section shall
278 become effective only if it complies with and is subject to all of the provisions of
279 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
280 nonseverable and if any of the powers vested with the general assembly pursuant
281 to chapter 536 to review, to delay the effective date, or to disapprove and annul
282 a rule are subsequently held unconstitutional, then the grant of rulemaking
283 authority and any rule proposed or adopted after August 28, 2007, shall be
284 invalid and void.

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Bill

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