

SECOND REGULAR SESSION

# SENATE BILL NO. 978

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CURLS.

Read 1st time February 26, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S4010.011

## AN ACT

To repeal sections 32.111, 32.112 and 32.115, RSMo Supp. 1997, section 32.125 as enacted by senate bill no. 3 of the first regular session of the eighty-eighth general assembly, and section 32.125 as enacted by senate bill no. 374 of the first regular session of the eighty-eighth general assembly, relating to tax credits for assistance to affordable housing, and to enact in lieu thereof four new sections relating to the same subject.

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

Section A. Sections 32.111, 32.112 and 32.115, RSMo Supp. 1997, section 32.125 as enacted by senate bill no. 3 of the first regular session of the eighty-eighth general assembly, and section 32.125 as enacted by senate bill no. 374 of the first regular session of the eighty-eighth general assembly, are repealed and four new sections enacted in lieu thereof, to be known as sections 32.111, 32.112, 32.115 and 32.125, to read as follows:

32.111. Any business firm **or individual** which engages in providing affordable housing assistance activities in the state of Missouri shall receive a tax credit as provided in section 32.115 if the commission or its delegate approves a proposal submitted by one or more business firms **or individuals** for the provision of affordable housing units. The proposal shall set forth the program of affordable housing to be conducted, the location and number of affordable housing units, the neighborhood area to be served, why the program is needed, the time period for which affordable housing units shall be provided, the estimated amount to be invested in the program, plans for implementing the program and a list of the business firms **and individuals** proposing to provide affordable housing assistance activities which are part of the proposal. In the case of rental units, all proposals approved by the commission shall require a land use restriction

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

agreement stating the provision of affordable housing on said property for a time period deemed reasonable by the commission. In the case of owner occupied units, all proposals approved by the commission shall require a land use restriction agreement for a time period deemed reasonable by the commission requiring any subsequent owner, except a lender with a security interest in the property, to be an owner occupant whose income at the time of acquisition is at or below the level described in section 32.105, and further requiring the acquisition price to any subsequent owner shall not exceed by more than a five percent annual appreciation the acquisition price to the original, eligible owner at the time tax credits are first claimed. The land use restriction agreement shall constitute a lien as described in subdivision (4) of subsection 3 of section 32.115. The restriction shall be approved by the property owner and shall be binding on any subsequent owner of the property unless otherwise approved by the commission. In approving a proposal, the commission may authorize the use of tax credits by one or more of the business firms **or individuals** listed in the proposal and shall establish specific requirements regarding the degree of completion of affordable housing assistance activities necessary to be eligible for tax credits provided under this section. If, in the opinion of the commission or its delegate, a business firm's **or individual's** investment can more consistently with the purposes of this section be made through a neighborhood organization, tax credits may be allowed as provided in this section. The commission may approve requests for multiyear credit commitments provided eligibility is maintained. The commission or its delegate is hereby authorized to promulgate rules and regulations for establishing criteria for evaluating such proposals by business firms **or individuals** for approval or disapproval, for establishing housing priorities for approval or disapproval of such proposals by business firms **or individuals**, and for the certification of eligibility for tax credits authorized under this section. The decision of the commission or its delegate to approve or disapprove a proposal pursuant to this section shall be in writing, and if approved, the maximum credit allowable to the business firm **or individual** shall be stated. A copy of the decision of the commission or its delegate shall be transmitted to the director of revenue and to the governor. A copy of the certification approved by the commission and a statement of the total amount of credits approved by the commission, the amount of credits previously taken by the taxpayer and the amount being claimed for the current tax year shall be filed in a manner and form designated by the director of revenue for any tax year in which a tax credit is being claimed.

32.112. Any business firm **or individual** which makes a contribution to a neighborhood organization, a significant part of whose activities consist of affordable housing assistance activities in the state of Missouri, shall receive a tax credit as provided in section 32.115 if the commission approves a proposal submitted by one or more business firms **or individuals** for the general operating assistance of such neighborhood organization. The proposal shall set forth the activities of the neighborhood organization, including the affordable housing assistance activities,

the neighborhood area to be served, why the activities are needed, the estimated amount to be contributed to the neighborhood organization, and a list of the business firms **and individuals** proposing to make the contributions. The commission is hereby authorized to promulgate rules and regulations pursuant to section 536.024, RSMo, for establishing criteria for evaluating such proposals by business firms **and individuals** for approval or disapproval, and for the certification of eligibility for tax credits authorized under this section. The decision of the commission to approve or disapprove a proposal pursuant to this section shall be in writing and, if approved, the maximum credit allowable to the business firm **or individual** shall be stated. A copy of the decision of the commission shall be transmitted to the director of revenue and to the governor. A copy of the certification approved by the commission and a statement of the total amount of credits approved, the amount of credits previously taken by the taxpayer and the amount being claimed for the current tax year shall be filed in a manner and form designated by the director of revenue for any tax year in which a tax credit is being claimed.

32.115. 1. The department of revenue shall grant a tax credit, to be applied in the following order until used, against:

(1) The annual tax on gross premium receipts of insurance companies in chapter 148, RSMo;

(2) The tax on banks determined under subdivision (2) of subsection 2 of section 148.030, RSMo;

(3) The tax on banks determined in subdivision (1) of subsection 2 of section 148.030, RSMo;

(4) The tax on other financial institutions in chapter 148, RSMo;

(5) The corporation franchise tax in chapter 147, RSMo;

(6) The state income tax in chapter 143, RSMo; and

(7) The annual tax on gross receipts of express companies in chapter 153, RSMo.

2. For proposals approved under section 32.110:

(1) The amount of the tax credit shall not exceed fifty percent of the total amount contributed during the taxable year by the business firm or, in the case of a financial institution, where applicable, during the relevant income period in programs approved pursuant to section 32.110;

(2) Except as provided in subsection 2 or 5 of this section, a tax credit of up to seventy percent may be allowed for contributions to programs where activities fall within the scope of special program priorities as defined with the approval of the governor in regulations promulgated by the director of the department of economic development;

(3) Except as provided in subsection 2 or 5 of this section, the tax credit allowed for contributions to programs located in any community shall be equal to seventy percent of the total amount contributed where such community is a city, town or village which has fifteen thousand

or less inhabitants as of the last decennial census and is located in a county which is either located in:

(a) An area that is not part of a standard metropolitan statistical area;

(b) A standard metropolitan statistical area but such county has only one city, town or village which has more than fifteen thousand inhabitants; or

(c) A standard metropolitan statistical area and a substantial number of persons in such county derive their income from agriculture. Such community may also be in an unincorporated area in such county as provided in subdivision (1), (2) or (3) of this subsection. Except in no case shall the total economic benefit of the combined federal and state tax savings to the taxpayer exceed the amount contributed by the taxpayer during the tax year;

(4) Such tax credit allocation, equal to seventy percent of the total amount contributed, shall not exceed four million dollars in any fiscal year. When the four million dollar limit on the tax credit allocation is committed, the tax credit allocation for such programs shall then be equal to fifty percent credit of the total amount contributed. Regulations establishing special program priorities are to be promulgated during the first month of each fiscal year and at such times during the year as the public interest dictates. Such credit shall not exceed two hundred and fifty thousand dollars annually except as provided in subdivision (5) of this section. No tax credit shall be approved for any bank, bank and trust company, insurance company, trust company, national bank, savings association, or building and loan association for activities that are a part of its normal course of business. Any tax credit not used in the period the contribution was made may be carried over the next five succeeding calendar or fiscal years until the full credit has been claimed. Except as otherwise provided for proposals approved under section 32.111, 32.112 or 32.117, in no event shall the total amount of all other tax credits allowed pursuant to sections 32.100 to 32.125 exceed twenty-two million dollars in any one fiscal year, of which six million shall be credits allowed pursuant to section 135.460, RSMo. If six million dollars in credits are not approved, then the remaining credits may be used for programs approved pursuant to sections 32.100 to 32.125;

(5) The credit may exceed two hundred fifty thousand dollars annually and shall not be limited if community services, crime prevention, education, job training, physical revitalization or economic development, as defined by section 32.105, is rendered in an area defined by federal or state law as an impoverished, economically distressed, or blighted area or as a neighborhood experiencing problems endangering its existence as a viable and stable neighborhood, or if the community services, crime prevention, education, job training, physical revitalization or economic development is limited to impoverished persons.

3. For proposals approved under section 32.111:

(1) The amount of the tax credit shall not exceed fifty-five percent of the total amount invested in affordable housing assistance activities by a business firm **or individual**. Whenever

said investment is made in the form of an equity investment or a loan, as opposed to a donation alone, tax credits may be claimed only where the loan or equity investment is accompanied by a donation which is eligible for federal income tax charitable deduction, and where the total value of the tax credits herein plus the value of the federal income tax charitable deduction is less than or equal to the value of the donation. Any tax credit not used in the period for which the credit was approved may be carried over the next ten succeeding calendar or fiscal years until the full credit has been allowed. If the affordable housing units for which a tax is claimed are within a larger structure, parts of which are not the subject of a tax credit claim, then expenditures applicable to the entire structure shall be reduced on a prorated basis in proportion to the ratio of the number of square feet devoted to the affordable housing units, for purposes of determining the amount of the tax credit. The total amount of tax credit granted for programs approved under section 32.111 for the fiscal year beginning July 1, 1991, shall not exceed two million dollars, to be increased by no more than two million dollars each succeeding fiscal year, until the total tax credits that may be approved reaches ten million dollars in any fiscal year;

(2) For any year during the compliance period indicated in the land use restriction agreement, the owner of the affordable housing rental units for which a credit is being claimed shall certify to the commission that all tenants renting claimed units are income eligible for affordable housing units and that the rentals for each claimed unit are in compliance with the provisions of sections 32.100 to 32.125. The commission is authorized, in its discretion, to audit the records and accounts of the owner to verify said certification;

(3) In the case of owner occupied affordable housing units, the qualifying owner occupant shall, before the end of the first year in which credits are claimed, certify to the commission that the occupant is income eligible during the preceding two years, and at the time of the initial purchase contract, but not thereafter. The qualifying owner occupant shall further certify to the commission, before the end of the first year in which credits are claimed, that during the compliance period indicated in the land use restriction agreement, the cost of the affordable housing unit to the occupant for the claimed unit can reasonably be projected to be in compliance with the provisions of sections 32.100 to 32.125. Any succeeding owner occupant acquiring the affordable housing unit during the compliance period indicated in the land use restriction agreement shall make the same certification;

(4) If at any time during the compliance period the commission determines a project for which a proposal has been approved is not in compliance with the applicable provisions of sections 32.100 to 32.125 or rules promulgated therefor, the commission may within one hundred fifty days of notice to the owner either seek injunctive enforcement action against the owner, or seek legal damages against the owner representing the value of the tax credits, or foreclose on the lien in the land use restriction agreement, selling the project at a public sale, and paying to the owner the proceeds of the sale, less the costs of the sale and less the value of all tax credits allowed

herein. The commission shall remit to the director of revenue the portion of the legal damages collected or the sale proceeds representing the value of the tax credits. However, except in the event of intentional fraud by the taxpayer, the proposal's certificate of eligibility for tax credits shall not be revoked.

4. For proposals approved under section 32.112, the amount of the tax credit shall not exceed fifty-five percent of the total amount contributed to a neighborhood organization by business firms **or individuals**. Any tax credit not used in the period for which the credit was approved may be carried over the next ten succeeding calendar or fiscal years until the full credit has been allowed. The total amount of tax credit granted for programs approved under section 32.112 shall not exceed one million dollars for each fiscal year.

**32.125. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated under the authority of this chapter, shall become effective only if the agency has fully complied with all of the requirements of chapter 536, RSMo, including but not limited to, section 536.028, RSMo, if applicable, after the effective date of this act. All rulemaking authority delegated prior to the effective date of this act is of no force and effect and repealed as of the effective date of this act, however nothing in this act shall be interpreted to repeal or affect the validity of any rule adopted and promulgated prior to the effective date of this act. If the provisions of section 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers vested with the general assembly pursuant to section 536.028 to review, to delay the effective date, or to disapprove and annul a rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so proposed and contained in the order of rulemaking shall be invalid and void, except that nothing in this act shall affect the validity of any rule adopted and promulgated prior to the effective date of this act.**

[32.125. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.]

[32.125. 1. No rule or portion of a rule promulgated under the authority of this chapter or any provisions of any other chapter by the department of revenue shall become effective until it has been approved by the joint committee on administrative rules in accordance with the procedures provided herein, and the delegation of the legislative authority to enact law by the adoption of such rules is dependent upon the power of the joint committee on administrative rules to review and suspend rules pending ratification by the senate and the house of representatives as provided herein.

2. Upon filing any proposed rule with the secretary of state, the department of revenue shall concurrently submit such proposed rule to the committee, which may hold

hearings upon any proposed rule or portion thereof at any time.

3. A final order of rulemaking shall not be filed with the secretary of state until thirty days after such final order of rulemaking has been received by the committee. The committee may hold one or more hearings upon such final order of rulemaking during the thirty-day period. If the committee does not disapprove such order of rulemaking within the thirty-day period, the department of revenue may file such order of rulemaking with the secretary of state and the order of rulemaking shall be deemed approved.

4. The committee may, by majority vote of the members, suspend the order of rulemaking or portion thereof by action taken prior to the filing of the final order of rulemaking only for one or more of the following grounds:

- (1) An absence of statutory authority for the proposed rule;
- (2) An emergency relating to public health, safety or welfare;
- (3) The proposed rule is in conflict with state law;
- (4) A substantial change in circumstance since enactment of the law upon which the proposed rule is based.

5. If the committee disapproves any rule or portion thereof, the department of revenue shall not file such disapproved portion of any rule with the secretary of state and the secretary of state shall not publish in the Missouri Register any final order of rulemaking containing the disapproved portion.

6. If the committee disapproves any rule or portion thereof, the committee shall report its findings to the senate and the house of representatives. No rule or portion thereof disapproved by the committee shall take effect so long as the senate and the house of representatives ratify the act of the joint committee by resolution adopted in each house within thirty legislative days after such rule or portion thereof has been disapproved by the joint committee.

7. Upon adoption of a rule as provided herein, any such rule or portion thereof may be suspended or revoked by the general assembly either by bill or, pursuant to section 8, article IV of the constitution, by concurrent resolution upon recommendation of the joint committee on administrative rules. The committee shall be authorized to hold hearings and make recommendations pursuant to the provisions of section 536.037, RSMo. The secretary of state shall publish in the Missouri Register, as soon as practicable, notice of the suspension or revocation.]

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