

SECOND REGULAR SESSION

# HOUSE BILL NO. 2399

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HOBBS (Sponsor) AND KOMO (Co-sponsor).

5457L.01I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 135, RSMo, by adding thereto two new sections relating to tax credits, with an emergency clause.

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

Section A. Chapter 135, RSMo, is amended by adding thereto two new sections, to be known as sections 135.840 and 135.841, to read as follows:

- 135.840. 1. **Notwithstanding any other provision of law to the contrary, for all fiscal years beginning on or after July 1, 2010, no tax credits now or hereafter provided under any program by law, except the senior citizens property tax credit created under sections 135.010 to 135.030 and the homestead preservation tax credit program created under section 137.106, shall be authorized except in accordance with this section and with section 135.841. Nothing in this section or section 135.841 shall be construed to limit or in any way impair a recipient's ability to redeem tax credits or an administering agency's ability to issue tax credits that were authorized before July 1, 2010.**
2. For all fiscal years beginning on or after July 1, 2010, the aggregate amount of all state tax credits authorized for issuance in any fiscal year, except the senior citizens property tax credit created under sections 135.010 to 135.030 and the homestead preservation tax credit program created under section 137.106, shall not exceed seventy percent of the total dollar amount of all state tax credits redeemed during the fiscal year ending on June 30, 2009, as of July 1, 2010, as determined by the commissioner of administration, excluding the senior citizens property tax credit created under sections 135.010 to 135.030 and the homestead preservation tax credit program created under section 137.106. The aggregate cap established in this subsection shall be adjusted

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 annually by the percentage change in general revenue collections net of refunds of the  
19 preceding fiscal year over the second preceding fiscal year, as determined by the  
20 commissioner of administration.

21       3. For the fiscal year beginning on July 1, 2010, an amount equal to one hundred  
22 percent of the aggregate cap established under this section shall be allocated to the  
23 department of economic development for authorizations of tax credits for the purposes set  
24 forth in section 135.841 and for no other purpose. For all fiscal years beginning on or after  
25 July 1, 2011, an amount equal to eighty percent of the aggregate cap established under this  
26 section shall be allocated to the department of economic development for authorizations  
27 of tax credits for the purposes set forth in section 135.841 and for no other purpose.

28       4. For all fiscal years beginning on or after July 1, 2011, the general assembly shall  
29 make an appropriation to the department of economic development in an amount not to  
30 exceed twenty percent of the aggregate cap established under this section for  
31 authorizations of tax credits for the purposes set forth in section 135.841 and for no other  
32 purpose.

33       5. By no later than October 1, 2010, and the first day of October each year  
34 thereafter, the department of economic development shall prepare and publish for review  
35 and public comment a draft allocation plan setting forth the proposed allocation of tax  
36 credits for each of the purposes specified in section 135.841. The draft allocation plan shall  
37 provide the following:

38       (1) At least five percent of the aggregate cap established in this section is to be  
39 allocated by the department of economic development for authorizations of tax credits for  
40 community assistance purposes under section 135.841;

41       (2) At least four percent of the aggregate cap established in this section shall be  
42 allocated by the department of economic development for authorizations of tax credits for  
43 financial and insurance purposes under section 135.841;

44       (3) At least six percent of the aggregate cap established in this section shall be  
45 allocated by the department of economic development to the Missouri development finance  
46 board for authorizations of tax credits for public infrastructure purposes under section  
47 135.841;

48       (4) At least ten percent of the aggregate cap established in this section shall be  
49 allocated by the department of economic development to the Missouri housing development  
50 commission for authorizations of tax credits for affordable housing purposes under section  
51 135.841;

52           (5) At least twenty-five percent of the aggregate cap established in this section shall  
53 be allocated by the department of economic development for authorizations of tax credits  
54 for redevelopment purposes under section 135.841;

55           (6) At least thirty percent of the aggregate cap established in this section shall be  
56 allocated by the department of economic development toward authorizations of tax credits  
57 for business development purposes under section 135.841; and

58           (7) After performing the allocations specified in subdivisions (1) to (6) of this  
59 subsection, the department of economic development may, subject to appropriation,  
60 allocate any remaining portion of the aggregate cap established under this section toward  
61 authorizations of tax credits for any of the purposes specified in section 135.841.

62           6. In addition to the proposed allocation of tax credits for each of the purposes  
63 specified in section 135.841, the allocation plan shall include, at a minimum, the following  
64 information:

65           (1) Application deadlines for the tax credits authorized under the purposes  
66 specified in section 135.841, except for tax credits for business development purposes;

67           (2) The proposed evaluation criteria and definitions applicable to each of the  
68 purposes specified in section 135.841;

69           (3) The methodology used to determine the economic impact and return on  
70 investment for each of the purposes specified in section 135.841; and

71           (4) Any priorities established for the authorizations of credits under each of the  
72 purposes specified in section 135.841.

73           7. Following an opportunity for public comment on the draft allocation plan, but  
74 in no event later than January 1, 2011, and the first day of January each year thereafter,  
75 the department of economic development shall approve and transmit the allocation plan,  
76 along with any public comments received thereon, to the budget committee of the house of  
77 representatives and the appropriations committee of the senate. The allocation plan as  
78 approved by the department of economic development shall govern the authorization of  
79 tax credits for any of the purposes specified in section 135.841, except that the department  
80 shall adjust the allocation plan to reflect the percentage of the aggregate cap appropriated  
81 by the general assembly as provided in subsection 3 of this section by no later than July 1,  
82 2011, and by the first day of July each year thereafter.

83           8. By no later than September 1, 2011, and the first day of September each year  
84 thereafter, the department of economic development shall prepare an annual report to the  
85 general assembly detailing the tax credits authorized for each of the specified purposes in  
86 section 135.841 during the prior fiscal year.

135.841. 1. Subject to the provisions of section 135.840 and this section, a credit  
2 against the taxes imposed under chapters 143, 147, and 148, except for sections 143.191 to  
3 143.265, may be authorized for the purposes specified in this section and for no other  
4 purpose. The department of economic development shall be the administering agency for  
5 all tax credits authorized for the purposes specified in this section. The decision of whether  
6 to authorize a tax credit under this section and the amount of any credit to be authorized  
7 is committed to the discretion of the director of the department of economic development  
8 or, with respect to tax credits allocated by the department of economic development under  
9 the allocation plan to public infrastructure or affordable housing purposes, to the Missouri  
10 development finance board or the Missouri housing development commission, as  
11 applicable. The department of economic development may consult with other state  
12 agencies when evaluating applications for tax credits under the purposes specified in this  
13 section.

14 2. Subject to the provisions of section 135.840 and this section, the director of the  
15 department of economic development may authorize a tax credit of as much as the lesser  
16 of fifty percent of any eligible project costs or the direct economic impact of the eligible  
17 project or activity for the purpose of business development. The term "business  
18 development" includes eligible projects or activities having the purpose of stimulating job  
19 creation or retention, stimulating new private investment, creating added value, improving  
20 environmental efficiencies, or causing a unique activity or event that creates significant  
21 direct and measurable economic benefit to the state. The department may increase any tax  
22 credit authorized under this subsection to an existing Missouri business by an amount not  
23 to exceed two percent of the tax credits authorized for each continuous five-year period  
24 such employer has been a Missouri business, not to exceed a total of ten percent. In  
25 determining whether to authorize a tax credit for business development purposes and the  
26 amount of any such tax credit, the department shall consider the state's net fiscal general  
27 revenue benefit as a result of the credit along with any other information set forth in the  
28 allocation plan.

29 3. Subject to the provisions of section 135.840 and this section, the director of the  
30 department of economic development may authorize a tax credit of up to thirty-five  
31 percent of eligible project costs incurred for an eligible project or activity for the purpose  
32 of redevelopment. The term "redevelopment" includes eligible projects or activities having  
33 the purpose of rehabilitating real property for productive use. In determining whether to  
34 authorize a tax credit for redevelopment and the amount of any such tax credit, the  
35 department shall consider a cost-benefit analysis of the eligible project or activity along  
36 with any additional information specified in the allocation plan.

37           **4. Subject to the provisions of section 135.840 and this section, the Missouri housing**  
38 **development commission may authorize a tax credit of up to fifty percent of eligible project**  
39 **costs incurred for an eligible project or activity for the purpose of providing affordable**  
40 **housing. The term "affordable housing" includes eligible projects or activities having the**  
41 **purpose of creating, rehabilitating, or providing access to decent, safe, and sanitary**  
42 **housing within the financial capability of the occupants. In determining whether to**  
43 **authorize a tax credit for redevelopment purposes and the amount of any affordable**  
44 **housing tax credits authorized, the commission shall consider a cost-benefit analysis of the**  
45 **eligible project or activity along with any additional information specified in the allocation**  
46 **plan.**

47           **5. Subject to the provisions of section 135.840 and this section, the Missouri**  
48 **development finance board may authorize a tax credit of up to fifty percent of eligible**  
49 **project costs incurred for an eligible project or activity for the purpose of providing public**  
50 **infrastructure. The term "public infrastructure" includes eligible projects or activities**  
51 **having the purpose of assisting in the construction or rehabilitation of facilities, utilities,**  
52 **transportation systems, and related improvements for public use. In determining whether**  
53 **to authorize a tax credit for public infrastructure purposes and the amount of any such**  
54 **credit, the board shall consider a cost-benefit analysis of the eligible project or activity**  
55 **along with any additional criteria specified in the allocation plan.**

56           **6. Subject to the provisions of section 135.840 and this section, the director of the**  
57 **department of economic development may authorize a tax credit of up to fifty percent of**  
58 **eligible costs incurred for an eligible project or activity for the purpose of providing**  
59 **community assistance. The term "community assistance" includes eligible projects or**  
60 **activities having the purpose of assisting in the creation or expansion of a service designed**  
61 **to meet a community or social need, either through physical improvements or increasing**  
62 **operating capacity. In determining whether to authorize a tax credit for community**  
63 **assistance purposes and the amount of any such credit, the department shall consider a**  
64 **cost-benefit analysis of the eligible project or activity along with any additional**  
65 **information specified in the allocation plan.**

66           **7. Subject to the provisions of section 135.840 and this section, the director of the**  
67 **department of economic development may authorize a tax credit for the purpose of**  
68 **assisting financial and insurance firms. The term "financial and insurance" includes**  
69 **eligible projects or activities having the purpose of assisting financial and insurance firms.**  
70 **In determining whether to authorize a tax credit for financial and insurance purposes and**  
71 **the amount of any such credit, the department shall consider a cost-benefit analysis of the**

72 eligible project or activity along with any additional information specified in the allocation  
73 plan.

74       8. Before authorizing any tax credit under this section, the director of economic  
75 development shall enter into an agreement with an eligible applicant specifying, at a  
76 minimum, the public benefit, the eligible project or activity, the eligible costs, the amount  
77 of the tax credits to be authorized, the applicable term of authorization, applicable  
78 recapture provisions, and any contractual conditions provided in section 620.017. In the  
79 contract with an eligible applicant, the director may agree to any of the following with  
80 respect to any tax credit authorized under this section:

81       (1) That the tax credit may be carried forward for a period not to exceed five years,  
82 but in no event shall any tax credit authorized under this section be carried back to any  
83 preceding tax years;

84       (2) That the tax credit may be transferred, sold, or assigned by filing a notarized  
85 endorsement thereof with the department that names the transferee, the amount of the tax  
86 credit transferred, and the value received for the credit, as well as any other information  
87 reasonably requested by the department;

88       (3) That the tax credit be considered refundable; provided, that in no event shall  
89 the department of economic development authorize refundable tax credits in an amount  
90 that exceeds twenty percent of the aggregate cap established in section 135.840 for the fiscal  
91 year beginning on July 1, 2011, or exceeds thirty percent of the aggregate cap established  
92 in section 135.840 for the fiscal year beginning on July 1, 2012, or exceeds fifty percent for  
93 any fiscal year beginning on or after July 1, 2013;

94       (4) That the credit may be based on a contribution or investment in an eligible  
95 project or activity;

96       (5) That the authorization may stream over a number of years;

97       (6) That the tax credit include any other feature not otherwise prohibited by law.

98       9. Before authorization of any tax credit under this section, the department of  
99 economic development, as administering agency, shall conduct the verifications provided  
100 in section 135.815 and any additional investigation not otherwise prohibited by law.

101       10. For any authorization of tax credits in excess of one million dollars for a single  
102 eligible applicant or eligible project or activity, the applicant shall provide to the  
103 department of economic development a certification of eligible activities or costs performed  
104 by a certified public accountant.

Section B. Because immediate action is necessary to ensure adequate revenues for the  
2 fiscal year beginning July 1, 2010, section A of this act is deemed necessary for the immediate  
3 preservation of the public health, welfare, peace, and safety, and is hereby declared to be an

4 emergency act within the meaning of the constitution, and section A of this act shall be in full  
5 force and effect upon its passage and approval.

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