

LEGAL UPDATES

PUBLISHED: JANUARY 15, 2010

## Professional

DAVID G. RICHARDSON  
ST. LOUIS:  
314.480.1718  
DAVID.RICHARDSON@  
HUSCHBLACKWELL.COM

## New Senate Bills Seek to Modify Missouri Tax Credit Programs

On January 6, 2010, Missouri Senators introduced three bills that seek to significantly change the Missouri tax credit programs. Below are summaries of three senate bills that seek to significantly change the approval process for Missouri tax credit programs.

**Senate Bill 584** – *three-year sunset periods for tax credit programs; mandatory review and reauthorization of tax credit programs*

Senate Bill 584, introduced by Senator Matt Bartle (R-08; Jackson County), proposes to modify the sunset provisions for new and reauthorized state programs (including most development tax credits) as well as require both review of tax credit programs by the state Joint Committee on Tax Policy and reauthorization of those tax credit programs by the General Assembly.

Under the bill, Section 23.253 RSMo would be amended to require that the sunset period for any new state programs authorized by the General Assembly after August 28, 2003, be reduced from not more than six to not more than three years. Existing programs that the legislature reauthorizes would have the sunset period reduced from 12 to three years from the date of the program's reauthorization. Moreover, the amended Section 23.253 contains a clause which subjects any program to which money was appropriated prior to August 28, 2003, to review by the Joint Committee on Tax Policy. Such review would result in a recommendation that the program "be sunset, continued or reorganized." The definition of "program" includes all tax credit programs authorized by statute. However, because not all tax credit programs are subject to appropriations, these requirements may not apply to all tax credit programs.

The bill also creates Section 135.820 RSMo, which subjects all tax credits which are NOT subject to review under the amended Section 23.253 to

mandatory review by the Joint Committee on Tax Policy. The new Section also prescribes the timing of such review. Of particular note are all housing and redevelopment tax credits, which must be reviewed and reported on by the Joint Committee no later than February 1, 2012. This 2012 deadline would apply to the following tax credits:

Neighborhood preservation tax credit created pursuant to sections 135.475 to 135.487;

Low-income housing tax credit created pursuant to sections 135.350 to 135.363;

Affordable housing tax credit created pursuant to sections 32.105 to 32.125;

Historic preservation tax credit created pursuant to sections 253.545 to 253.561;

Brownfield redevelopment program tax credit created pursuant to sections 447.700 to 447.718;

Community development corporations tax credit created pursuant to sections 135.400 to 135.430;

New markets tax credit created pursuant to section 135.680; and

Distressed areas land assemblage tax credit created pursuant to section 99.1205.

These programs must be reviewed and reported on by February 1, 2013:

Enterprise zone tax benefits created pursuant to sections 135.200 to 135.270;

Business use incentives for large-scale development programs created pursuant to sections 100.700 to 100.850;

Development tax credits created pursuant to sections 32.100 to 32.125;

Rebuilding communities tax credit created pursuant to section 135.535;

Enhanced enterprise zone created pursuant to sections 135.950 to 135.975;

Missouri quality jobs program created pursuant to sections 620.1875 to 620.1900;

Neighborhood assistance tax credit created pursuant to sections 32.100 to 32.125; and

Transportation development tax credit created pursuant to section 135.545.

Perhaps the most important provision of this bill states that **all** tax credits authorized by programs subject to review under this new Section 135.820 will not be approved beyond December 31, 2014, unless the General Assembly reauthorizes a specific tax credit program after review by the Joint Committee through either (i) a concurrent resolution, or (ii) enactment of a general law modifying the tax credit program.

The bill then adds one final provision that deems each tax credit program reauthorized in such a manner a “new program,” which would thereafter be subject to the revised sunset periods in Section 23.253.

A copy of SB 584 is available online [here](#).

*Procedural Status of SB 584 - First Reading (1/6/10); Second Reading and Referred to Senate Governmental Accountability and Fiscal Oversight Committee (1/13/10)*

### **Senate Bill 728 – limits amounts of tax credits available for authorization beginning in FY 2012 to amounts allocated by enactment of appropriation bills for public debt**

Senate Bill 728, introduced by Senator Jason Crowell (R-27; Cape Girardeau), proposes to modify virtually every state tax credit program<sup>[1]</sup> by limiting the amount of tax credits available for authorization to an amount decided through the appropriations process. This requirement would begin in FY 2012 and would impact the tax credit programs listed below.

The bill seeks to implement this drastic change to the tax credit process by modifying each tax credit authorizing statute in a similar way. First, the bill softens any portion of the particular statute stating that recipients “shall receive a tax credit” by stating that recipients “may,” based upon new limitations added to each section, receive a tax credit. Next, the bill adds these new limitations to each statute. In particular, the bill would require proposed recipients to file new application forms provided by the allocating agency and would not allow for authorization of any tax credit amounts except those amounts specifically allocated. The new language generally reads as follows, with minor variations specific to each tax credit program:

“Other provisions of law to the contrary notwithstanding, no tax credits shall be authorized under the provisions of this section after June 30, 2011, unless an allocation is made pursuant to the provisions of section 135.821. In any fiscal year for which an allocation is made pursuant to the provisions of section 135.821, no more than the amount of tax credits so allocated shall be authorized.”

The bill then correspondingly creates a new Section 135.821, which establishes the allocation procedure to be followed by each agency that administers a tax credit program. Generally, the procedure would begin with the agency submitting a request for allocation to the budget committee in the House and the appropriations committee in the Senate by October 1 immediately preceding each fiscal year. That would require agencies to submit the first of these requests for allocation by October 1, 2010, for FY 2012, which begins on July 1, 2011. It appears that these allocation requests **may exceed** annual tax credit limitations currently imposed by state law. So, for example, the \$140 million annual limit on state historic rehabilitation tax credits may be exceeded in an annual appropriation.

For programs seeking an allocation for authorizations of tax credits for programs where credits may be issued over multiple fiscal years, also known as streaming tax credit authorizations, the initial allocation request will need to account for the aggregate amount of tax credits, irrespective of year of allocation. For subsequent years of these streaming tax credit authorizations, agencies would not be required to re-request the allocation.

Following submission of such a request, an appropriations bill relating to public debt and specifying the tax credit program, the year of allocation, the administering agency and the distribution of the credits for any streaming tax credit authorizations would need to be passed into law by the General Assembly. Any unauthorized portion of the annual allocation will expire at the end of each fiscal year.

The following is a list of several tax credit programs of particular interest to Husch Blackwell Sanders which are among those impacted by this bill. Each listing also has a brief description of the changes to that program imposed by SB 728:

Low-Income Housing – Only changes are those generally described above.

State Historic Preservation – Establishes the expiration of Section 253.559 (current application procedures) as of June 30, 2011. For FY 2012 and thereafter, the bill implements those appropriation limitations generally described above.

Brownfield Redevelopment – Only changes are those generally described above.

New Markets – The Department of Economic Development (DED) will not certify any Qualified Equity Investments (QEI) unless allocation for tax credits associated with such QEI has been made as generally described above.

Enhanced Enterprise Zone – Only changes are those generally described above.

Missouri Quality Jobs – Only changes are those generally described above.

A copy of SB 728 is available online here.

*Procedural Status of SB 728 - First Reading (1/6/10)*

***Senate Bill 718 – repeals annual limit bypass provisions of the Missouri Development Finance Board (MDFB) infrastructure development fund tax credit program and limits amount of tax credits available for authorization beginning in FY 2012 to amounts allocated by enactment of appropriation bills for public debt***

Senate Bill 718, introduced by Senator Jason Crowell (R-27; Cape Girardeau), proposes to amend the MDFB infrastructure development fund tax credit program in Section 100.286 by ending the procedure which allows the \$10 million annual tax credit limit to be exceeded upon the mutual agreement of the commissioner of the Office of Administration, the director of the Department of Economic Development, and the director of the Department of Revenue. Moreover, the bill introduces a procedure similar to that described above under SB 728, which would require that MDFB submit requests for all future allocation of tax credits to be approved through the appropriations process beginning with FY 2012.

The MDFB would be required to submit such a request to the budget committee in the House and the appropriations committee in the Senate by October 1 immediately preceding each fiscal year. As with the new procedure proposed in SB 728, for projects that would require streaming tax credit authorizations, the initial allocation request must account for the aggregate amount of tax credits.

Following submission of such a request, an appropriations bill relating to public debt and specifying the tax credit program, the year of allocation, the administering agency and the distribution of the credits for any streaming tax credit authorizations would need to be passed into law by the General Assembly. The tax credits would then be administered according to existing procedures. Any unauthorized portion of the annual allocation will expire at the end of each fiscal year.

A copy of SB 718 is available online [here](#).

*Procedural Status of SB 718 - First Reading (1/6/10)*

### **Contact Info**

Husch Blackwell Sanders attorneys in the Real Estate & Development Department and the Financial Services Department are monitoring the status and development of the bills. Please contact us if you have any questions or if we can assist in any way.

[1] Those tax credits not affected by SB 728 include the senior citizen property tax credit, the homestead preservation tax credit, financial and insurance tax credits, the residential treatment agency tax credit, and the community college new job training and retention credits.

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