FIRST REGULAR SESSION

HOUSE BILL NO. 380

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ZIMMERMAN (Sponsor), SCHUPP, CARLSON, SPRENG, FALLERT, McMANUS, WETER, COLONA, OXFORD, ATKINS, SCHIEFFER, KIRKTON, TAYLOR, CASEY, RIZZO, ELLINGER AND McGEOGHEGAN (Co-sponsors).

0817L.01I D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto eleven new sections relating to senior citizen homestead deferral of taxes.

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

Section A. Chapter 135, RSMo, is amended by adding thereto eleven new sections, to be known as sections 135.077, 135.078, 135.079, 135.080, 135.081, 135.082, 135.083, 135.084, 135.085, 135.086, and 135.087, to read as follows:

135.077. As used in sections 135.077 to 135.087, the following terms mean:

(1) "Department", the department of revenue;

(2) "Director", the director of revenue;

(3) "Equity interest", the difference between the assessed value of the property by the county assessor's office and the total of:

(a) All debts from the lien of mortgage, deeds of trust or security interests which are recorded or noted on a certificate of title before January first of the current tax year; and

(b) Accumulated deferred taxes;

(4) "Homestead", the owner occupied principal dwelling, either real or personal property, owned by the taxpayer and the tax lot upon which it is located. If the homestead is located in a multi-unit building, the homestead is the portion of the building actually used as the principal dwelling and its percentage of the value of the common elements and of the value of the tax lot upon which it is built. The percentage is the value of the unit

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.

consisting of the homestead compared to the total value of the building exclusive of the common elements, if any;

(5) "Household income", the federal adjusted gross income;

(6) "Maximum upper limit", thirty-two thousand dollars;

(7) "Taxpayer", an individual who has filed a claim for deferral under sections 135.077 to 135.087 or individuals who have jointly filed a claim for deferral under sections 135.077 to 135.087;

(8) "Tax-deferred property", the property upon which taxes are deferred under sections 135.077 to 135.087;

(9) "Taxes" or "property taxes", ad valorem taxes, assessments, fees, and charges entered on the assessment and tax roll.

135.078. 1. An individual, or two or more individuals jointly, may elect to defer the property taxes on their homestead by filing a claim for deferral with the county assessor after January first and on or before October fifteenth of the first year in which deferral is claimed if the individual, or, in the case of two or more individuals filing a claim jointly, the older individual, is sixty-two years of age or older on October fifteenth of the year in which the claim is filed. No such individual or individuals shall be eligible to defer property taxes under this section if such individual or individuals filed a valid claim for any homestead exemption credit under section 137.106.

2. In order to make the election described in subsection 1 of this section, the individual shall have, or in case of two or more individuals filing a claim jointly, all of the individuals together shall have household income for the calendar year immediately preceding the calendar year in which the claim is filed of less than the maximum upper limit.

3. The county assessor shall forward each claim filed under this section to the director of revenue which shall determine if the property is eligible for deferral.

4. When the taxpayer elects to defer property taxes for any year by filing a claim for deferral under subsection 1 of this section, it shall have the effect of:

(1) Deferring the payment of the property taxes levied on the homestead for the fiscal year beginning on January first of such year;

(2) Continuing the deferral of the payment by the taxpayer of any property taxes deferred under sections 135.077 to 135.087 for previous years which have not become delinquent under section 135.083;

(3) Continuing the deferral of the payment by the taxpayer of any future property taxes for as long as the provisions of section 135.079 are met.

5. If a guardian or conservator has been appointed for an individual otherwise qualified to obtain deferral of taxes under sections 135.077 to 135.087, the guardian or conservator may act for such individual in complying with the provisions of sections 135.077 to 135.087.

6. If a trustee of an inter vivos trust which was created by and is revocable by an individual, who is both the settlor and a beneficiary of the trust and who is otherwise qualified to obtain a deferral of taxes under sections 135.077 to 135.087, owns the fee simple estate under a recorded instrument of sale, the trustee may act for the individual in complying with the provisions of sections 135.077 to 135.087.

7. Nothing in this section shall be construed to require a spouse of an individual to file a claim jointly with the individual even though the spouse may be eligible to claim the deferral jointly with the individual.

8. Any person aggrieved by the denial of a claim for deferral of homestead property taxes or disqualification from deferral of homestead property taxes may appeal in the manner provided for denial of a claim under section 143.841.

135.079. 1. In order to qualify for tax deferral under sections 135.077 to 135.087, the property shall meet all of the following requirements when the claim is filed and thereafter so long as the payment of taxes by the taxpayer is deferred:

(1) The property shall be the homestead of the individual or individuals who file the claim for deferral, except for an individual required to be absent from the homestead by reason of health;

(2) The person claiming the deferral shall, by himself or herself or together with his or her spouse, own the fee simple estate or be purchasing the fee simple estate under a recorded instrument of sale, or two or more persons shall together own or be purchasing the fee simple estate with rights of survivorship under a recorded instrument of sale if all owners live in the homestead and if all owners apply for the deferral jointly;

(3) There shall be no prohibition to the deferral of property taxes contained in any provision of federal law, rule or regulation applicable to a mortgage, trust deed, land sale contract, or conditional sale contract for which the homestead is security;

(4) The equity interest in the homestead is a positive number equal to or exceeding ten percent of the assessed value of the homestead; and

(5) The person claiming the deferral shall, by himself or herself or together with his or her spouse, show proof of insurance on the homestead in an amount equal to or exceeding the assessed value of the homestead to the director of revenue.

2. A taxpayer's claim for deferral under sections 135.077 to 135.087 shall be in writing on a form supplied by the department and shall:

(1) Describe the homestead;

(2) Recite facts establishing the eligibility for the deferral under the provisions of sections 135.077 to 135.087, including facts that establish that the household income of the individual, or in the case of two or more individuals claiming the deferral jointly, was, for the calendar year immediately preceding the calendar year in which the claim is filed, less than the amount required under section 135.078;

(3) Have attached any documentary proof required by the director to show that the requirements of sections 135.077 to 135.087 have been met.

3. There shall be annexed to the claim a statement verified by a written declaration of the applicant making the claim to the effect that the statements contained in the claim are true.

4. If eligibility for deferral of homestead property is established as provided in sections 135.077 to 135.087, the director of revenue shall notify the county assessor and the county assessor shall show on the current ad valorem assessment and tax roll which property is tax-deferred property by an entry clearly designating such property as tax-deferred property.

5. When requested by the director, the tax collector shall send to the director as soon as the taxes are extended upon the roll the tax statement for each tax-deferred property.

6. Interest shall accrue on the actual amount of taxes advanced to the county for the tax-deferred property at the rate of six percent per annum.

135.080. 1. In each county in which there is tax-deferred property, the director of revenue shall cause to be recorded in the mortgage records of the county a list of tax-deferred properties of that county. The list shall contain a description of the property as listed on the assessment roll together with the name of the owner listed thereon.

2. Except as provided in section 135.082, the recording of the tax-deferred properties under subsection 1 of this section is notice that the director claims a lien against those properties in the amount of the deferred taxes plus interest together with any fees paid to the county clerk in connection with the recording, release, or satisfaction of the lien, even though the amount of taxes, interest, or fees is not listed.

3. Notwithstanding any provisions of law to the contrary, the director shall not be required to pay any filing, indexing, or recording fees to the county in connection with the recording, release or satisfaction of liens against tax-deferred properties of that county in advance or at the time entry is made.

4. Upon determining the amount of deferred taxes on tax-deferred property for the tax year, the director shall pay to the respective county tax collectors an amount equivalent

to the deferred taxes less two percent thereof. Payment shall be made from the account established under section 135.087.

5. The director shall maintain accounts for each deferred property and shall accrue interest only on the actual amount of taxes advanced to the county.

6. If only a portion of taxes are deferred under section 135.084, the director shall pay the portion that is eligible for deferral to the tax collector and shall provide a separate notice to the county assessor stating the amount of property taxes that the director is paying.

135.081. 1. On or before December fifteenth of each year, the director of revenue shall send a notice to each taxpayer who is qualified to claim deferral of property taxes for the current tax year. The notice shall:

(1) Inform the taxpayer that the property taxes have or have not been deferred in the current year;

(2) Show the total amount of deferred taxes remaining unpaid since initial application for deferral and the interest accruing therein to November fifteenth of the current year;

(3) Inform the taxpayer that voluntary payment of the deferred taxes may be made at any time to the director of revenue; and

(4) Contain any other information that the director considers necessary to facilitate administration of the homestead deferral program.

2. The director shall give the notice required under subsection 1 of this section by an unsealed postcard or other form of mail sent to the residence address of the taxpayer as shown in the claim for deferral or as otherwise determined by the director to be the correct address of the taxpayer.

3. Any taxpayer who meets the requirements of section 135.078 and whose homestead meets the requirements of section 135.079 who has not deferred their property tax for the preceding calendar year and who has deferred in prior years shall be permitted to file the application required by section 135.079 until January thirtieth of the following calendar year.

135.082. 1. At the time that the taxpayer elects to defer property taxes under sections 135.077 to 135.087, the director of revenue shall estimate the amount of property taxes that will be deferred for tax years beginning on or after January 1, 2011, and interest thereon. Thereafter, the director shall have a lien in the amount of the estimate.

2. The lien created under subsection 1 of this section shall attach to the property to which the election to defer relates on January first of the tax year of initial deferral.

3. The lien created under subsection 1 of this section in the amount of the estimate shall have the same priority as other real property tax liens except that the lien of mortgages, trust deeds, or security interests which are recorded or noted on a certificate of title prior in time to the attachment of the lien for deferred taxes shall be prior to the liens for deferred taxes.

4. If during the period of tax deferment, the amount of taxes, interest, and fees exceeds the estimate, the director shall have a lien for the amount of the excess. The liens for the excess shall attach to the property on January first of the tax year in which the excess occurs. The lien for the excess shall have the same priority as other real property tax liens, except that the lien of mortgages, trust deeds, or security interests recorded or noted on any certificate of title prior in time to the date that the director records an amendment to its estimate to reflect its lien for the excess shall be prior to the lien for the excess.

5. Notwithstanding the provisions of section 135.080, the notice of lien for deferred taxes recorded as provided in section 135.080 arising on or after January 1, 2012, shall list the amount of the estimate of deferred taxes, interest, and fees made by the director under subsection 1 of this section and any amendment to the notice to reflect a lien for excess, as described under subsection 4 of this section, shall list the amount of the excess that the director claims as lien.

6. A lien created under this section may be foreclosed by the director under the law relating to foreclosure in civil suits or any other collection methods given the director of revenue. The court may award reasonable attorney fees to the prevailing party in a foreclosure action under this section.

7. Receipts from foreclosure proceedings shall be credited in the same manner as other repayments of deferred property taxes under section 135.087.

8. By means of voluntary payment made as provided under section 135.086, the taxpayer may limit the amount of the lien for deferred taxes created under this section. If the taxpayer desires that the limit be reflected in the records of the county, the taxpayer shall request, subject to any rules adopted by the director, that the director cause a partial satisfaction of the lien to be recorded in the county. Upon receipt of such a request, the director shall cause a partial satisfaction, in the amount of the voluntary payment, to be so recorded. Nothing in this subsection shall affect the priority of the liens of the director, as originally created under subsections 1 and 4 of this section.

9. Nothing in this section shall affect any lien arising under sections 135.077 to 135.087 for taxes assessed before January 1, 2012.

135.083. 1. Subject to subsections 5 to 7 of this section, all deferred property taxes, including accrued interest, become payable as provided in this section when:

(1) The taxpayer who claimed deferment of collection of property taxes on the homestead dies or, if there was more than one claimant, the survivor of the taxpayers who originally claimed deferment of collection of property taxes under section 135.078 dies;

(2) The property with respect to which deferment of collection of taxes is claimed is sold, or a contract to sell is entered into, or some person other than the taxpayer who claimed the deferment becomes the owner of the property;

(3) The tax-deferred property is no longer the homestead of the taxpayer who claimed the deferral, except in the case of a taxpayer required to be absent from such tax-deferred property by reason of health; or

(4) The tax-deferred property, a manufactured structure or floating home, is moved out of the state.

2. Whenever any of the circumstances listed in subsection 1 of this section occurs:

(1) The deferral of taxes for the assessment year in which the circumstance occurs shall continue for such assessment year; and

(2) The amounts of deferred property taxes, including accrued interest, for all years shall be due and payable on the date of closing or the date of probate to the director of revenue, except as provided in subsections 4 and 5 of this section and subsections 8 to 12 of section 135.086.

3. Notwithstanding the provisions of subsection 2 of this section and subsections 8 to 12 of section 135.086, when the circumstances listed in subdivision (4) of subsection 1 of this section occur, the amount of deferred taxes shall be due and payable five days before the date of removal of the property from the state.

4. If the amounts falling due as provided in this section are not paid on the indicated due date, or as extended under subsections 8 to 12 of section 135.086 such amounts shall be deemed delinquent as of that date and the property shall be subject to foreclosure as provided in section 135.082.

5. Notwithstanding the provisions of subsection 1 of this section, when one of the circumstances listed in subsection 1 of this section occurs, the spouse who was not eligible to or did not file a claim jointly with the taxpayer may continue the property in its deferred tax status by filing a claim within the time and in the manner provided under section 135.078 if:

(1) The spouse of the taxpayer is or will be sixty years of age or older not later than six months from the day the circumstance listed in subsection 1 of this section occurs; and

(2) The property is the homestead of the spouse of the taxpayer and meets the requirements of subsection 3 of section 135.079.

6. A spouse who does not meet the age requirements of subsection 5 of this section but is otherwise qualified to continue the property in its tax-deferred status under subsection 5 of this section may continue the deferral of property taxes deferred for previous years by filing a claim within the time and in the manner provided under section 135.078. If a spouse eligible for and continuing the deferral of taxes previously deferred under this subsection becomes sixty-two years of age before October fifteenth of any year, the spouse may elect to continue the deferral of previous years' taxes deferred under this subsection and may elect to defer the current assessment year's taxes on the homestead by filing a claim within the time and in the manner provided under section 135.078. Thereafter, payment of the taxes levied on the homestead and deferred under this subsection and payment of taxes levied on the homestead in the current assessment year and in future years may be deferred in the manner provided in and subject to sections 135.077 to 135.087.

7. Notwithstanding that section 135.078 requires that a claim be filed no later than October fifteenth, if the director of revenue determines that good and sufficient cause exists for the failure of a spouse to file a claim under this section on or before October fifteenth, the claim may be filed within one hundred eighty days after notice of taxes due and payable under section 135.077 to 135.087 is mailed or delivered by the director to the taxpayer or spouse.

135.084. 1. Notwithstanding any other provision of sections 135.077 to 135.087, if the individual or, in the case of two or more individuals electing to defer property taxes jointly, all of the individuals together, or the spouse who has filed a claim under subsections 5 to 7 of section 135.083, has household income that exceeds the maximum upper limit for the tax year that began in the previous calendar year, then for the tax year next beginning, the amount of taxes for which deferral is allowed shall be reduced by fifty cents for each dollar of household income in excess of the maximum upper limit or if that income exceeds the maximum upper limit by a factor of two, the property taxes shall not be deferred.

2. Before December first of each year, the director of revenue shall review returns filed under chapter 143 to determine if subsection 1 of this section is applicable for a homestead for the tax year next beginning. If subsection 1 of this section is applicable, the director shall notify by mail the taxpayer or spouse electing deferral, and the taxes otherwise to be deferred for the tax year next beginning shall be reduced as provided in subsection 1 of this section or, if household income in excess of the maximum upper limit

exceeds the maximum upper limit by a factor of two, the property taxes shall not be deferred.

3. If the taxpayer or spouse does not file a return for purposes of chapter 143 and the director has reason to believe that the federal adjusted gross income of the taxpayer or spouse exceeds the maximum upper limit for the tax year that began in the previous calendar year, the director shall notify by mail the taxpayer or spouse electing deferral. If, within thirty days after the notice is mailed, the taxpayer or spouse does not file a return under chapter 143 or otherwise satisfy the director that household income does not exceed the maximum upper limit, the director shall again notify the taxpayer or spouse, and the taxes otherwise to be deferred for the tax year next beginning shall not be deferred.

4. Nothing in this section shall affect the continued deferral of taxes that have been deferred for tax years beginning prior to the tax year next beginning or the right to deferral of taxes for a tax year beginning after the tax year next beginning if subsection 1 of this section is not applicable for that tax year for the homestead.

5. If, after an initial determination under this section has been made by the director, upon audit or examination or otherwise, it is discovered that the taxpayer or spouse had household income in excess of the limitation provided under subsection 1 of this section, the director shall determine the amount of taxes deferred that should not have been deferred and give notice to the taxpayer or spouse of the amount of taxes that should not have been deferred. The provisions of chapter 143 shall apply to a determination of the director under this section in the same manner as those provisions are applicable to an income tax deficiency. The amount of deferred taxes that should not have been deferred shall bear interest from the date paid by the director until paid at the rate of six percent. A deficiency shall not be assessed under this section if notice required under this section is not given to the taxpayer or spouse within three years after the date that the director has paid the deferred taxes to the county. Upon payment of the amount assessed as deficiency, and interest, the department shall execute a release in the amount of the payment and the release shall be conclusive evidence of the removal and extinguishment of the lien under sections 135.077 to 135.087 to the extent of the payment.

6. If, after an initial determination under this section has been made by the director, upon claim for refund, audit or examination or otherwise, it is discovered that the taxpayer or spouse had household income in the amount of or less than the limitation provided under subsection 1 of this section, the director shall determine the amount of taxes deferred that should have been deferred and give notice to the taxpayer or spouse of the amount of taxes that should have been deferred. The provisions of chapter 143 shall apply to a determination of the director under this section in the same manner as those

provisions are applicable to an income tax refund. The amount of the taxes that should have been deferred shall bear interest from the date paid by the taxpayer to the county at the rate established by the director of the department of revenue for refunds until paid. Claim for refund under this subsection shall be filed within three years after the earliest date that the taxpayer or spouse is notified by the director that the taxes are not deferred.

7. This section applies to all tax-deferred property, notwithstanding that election to defer taxes is made under sections 135.077 to 135.087 before or after January 1, 2012.

135.085. If a taxpayer has been precluded from deferring any portion of their property tax due to their household income exceeding the maximum upper limit, such person or persons may qualify for a deferral of the amount of property tax which has increased on their homestead since January first in the year after their sixty-second birthday. Such deferral shall be subject to the provisions of sections 135.077 to 135.087 as if it were a deferral under section 135.078.

135.086. 1. All payments of deferred taxes shall be made to the director of revenue.

2. Subject to subsection 3 of this section, all or part of the deferred taxes and accrued interest may at any time be paid to the director by:

(1) The taxpayer or the spouse of the taxpayer;

(2) The next of kin of the taxpayer, heir at law of the taxpayer, child of the taxpayer or any person having or claiming a legal or equitable interest in the property.

3. A person listed in subdivision (2) of subsection 2 of this section may make such payments only if no objection is made by the taxpayer within thirty days after the director deposits in the mail notice to the taxpayer of the fact that such payment has been tendered.

4. Any payment made under this section shall be applied first against accrued interest and any remainder against the deferred taxes. Such payment shall not affect the deferred tax status of the property. Unless otherwise provided by law, such payment shall not give the person paying the taxes any interest in the property or any claim against the estate, in the absence of a valid agreement to the contrary.

5. When the deferred taxes and accrued interest are paid in full and the property is no longer subject to deferral, the director shall prepare and record in the county in which the property is located a satisfaction of deferred property tax lien.

6. At the time that the property is deeded over to the county at the conclusion of the foreclosure proceedings under chapter 141, the court shall order the county treasurer to pay to the director of revenue from the unsegregated tax collections account the amount of deferred taxes and interest which were not collected.

7. Immediately upon payment, the county treasurer shall notify the tax collector of the amount paid to the director for the property which has been deeded to the county.

8. The director of revenue may extend the time for payment of the deferred taxes and interest accruing with respect to the taxes becoming due and payable under subsection 3 of section 135.083 if:

(1) The taxpayer who claimed homestead property tax deferral dies, or if a spouse who continued the deferral under subsections 5 to 7 of section 135.083 dies;

(2) The homestead property becomes property of an individual or individuals:

(a) By inheritance or devise; or

(b) If the individual or individuals are heirs or devisees, as defined in section 472.010, in the course of settlement of the estate;

(3) The individual or individuals commence occupancy of the property as a principal residence on or before February fifteenth of the calendar year following the calendar year of death; and

(4) The individual or individuals make application to the director for an extension of time for payment of the deferred taxes and interest before February fifteenth of the calendar year following the calendar year of death.

9. (1) Subject to subdivision (2) of this subsection, an extension granted under this section shall be for a period not to exceed five years after February fifteenth of the calendar year following the calendar year of death. The terms and conditions under which the extension is granted shall be in accordance with a written agreement entered into by the director and the individual or individuals.

(2) An extension granted under this section shall terminate immediately if:

(a) The homestead property is sold or otherwise transferred by any party to the extension agreement;

(b) All of the heirs or devisees who are parties to the extension agreement cease to occupy the property as a principal residence; or

(c) The homestead property, a manufactured structure or floating home, is moved out of the state.

10. If the director has reason to believe that the homestead property is not sufficient security for the deferred taxes and interest, the director may require the individual or individuals to furnish a bond conditioned upon payment of the amount extended in accordance with the terms of the extension. The bond shall not exceed an amount double the taxes with respect to which tax extension is granted.

11. During the period of extension, and until paid, the deferred taxes shall continue to accrue interest in the same manner and at the same rate as provided under subsection 6 of section 135.079. No interest shall accrue upon interest.

12. When any taxpayer who claimed homestead property tax deferral dies, the spouse, heirs, and devisees, as defined in section 472.010, shall notify in writing the director of revenue of the taxpayer's death.

135.087. 1. Nothing in sections 135.077 to 135.087 is intended to or shall be construed to:

(1) Prevent the collection, by foreclosure, of property taxes which become a lien against tax-deferred property;

(2) Defer payment of special assessments to benefitted property which assessments do not appear on the assessment and tax roll; or

(3) Affect any provision of any mortgage or other instrument relating to land requiring a person to pay property taxes.

2. After August 28, 2011, it shall be unlawful for any mortgage trust deed or land sale contract to contain a clause or statement which prohibits the owner from applying for the benefits of the deferral of homestead property taxes provided in sections 135.077 to 135.087. Any such clause or statement in a mortgage trust deed or land sale contract executed after August 28, 2011, shall be void.

3. (1) There is hereby established in the state treasury the "Senior Property Tax Deferral Revolving Account" to be used by the director of revenue for the purpose of making the payments to:

(a) County tax collectors of property taxes deferred for tax years beginning on or after January 1, 2012, as required by subsections 4 to 6 of section 135.080;

(b) The director for its expenses in administering the property tax and special assessment senior deferral programs.

(2) The funds necessary to make payments under subdivision (1) of this subsection shall be advanced annually to the director.

(3) The senior property tax deferral revolving account may include a reserve for payment of department administrative expenses.

(4) All sums of money received by the director of revenue under sections 135.077 to 135.087 as repayments of deferred property taxes including the interest accrued under subsection 6 of section 135.079 shall, upon receipt, be credited to the revolving account and are continuously appropriated to the department for the purposes of subdivision (1) of this subsection.

(5) If there is not sufficient money in the revolving account to make the payments required by subdivision (1) of this subsection, an amount sufficient to make the required payments shall be transferred from the general revenue fund to the revolving account.

(6) When the department determines that moneys in sufficient amounts are available in the revolving account, the director shall repay to the general revenue fund the amounts advanced as investments under subdivision (2) of this subsection. The moneys used to repay the general revenue fund under this section shall not be considered as part of the calculation of total state revenue. The provisions of section 33.080 to the contrary notwithstanding, moneys in the revolving account shall not lapse to general revenue.

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