

FIRST REGULAR SESSION

HOUSE BILL NO. 227

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ZERR (Sponsor), DIEHL, ALLEN, LEARA, SWEARINGEN,
MCCAHERTY, WALKER, LAUER, KRATKY, SOMMER, TORPEY AND WIELAND (Co-sponsors).

0550H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 135.680, RSMo, and to enact in lieu thereof one new section relating to qualified equity investment tax credits.

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

Section A. Section 135.680, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 135.680, to read as follows:

135.680. 1. As used in **subsections 1 to 5** of this section, the following terms shall mean:

(1) "Adjusted purchase price", the product of:

(a) The amount paid to the issuer of a qualified equity investment for such qualified equity investment; and

(b) The following fraction:

a. The numerator shall be the dollar amount of qualified low-income community investments held by the issuer in this state as of the credit allowance date during the applicable tax year; and

b. The denominator shall be the total dollar amount of qualified low-income community investments held by the issuer in all states as of the credit allowance date during the applicable tax year;

c. For purposes of calculating the amount of qualified low-income community investments held by an issuer, an investment shall be considered held by an issuer even if the investment has been sold or repaid; provided that the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any

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.

17 profits realized, in another qualified low-income community investment within twelve months
18 of the receipt of such capital. An issuer shall not be required to reinvest capital returned from
19 qualified low-income community investments after the sixth anniversary of the issuance of the
20 qualified equity investment, the proceeds of which were used to make the qualified low-income
21 community investment, and the qualified low-income community investment shall be considered
22 held by the issuer through the seventh anniversary of the qualified equity investment's issuance;

23 (2) "Applicable percentage", zero percent for each of the first two credit allowance dates,
24 seven percent for the third credit allowance date, and eight percent for the next four credit
25 allowance dates;

26 (3) "Credit allowance date", with respect to any qualified equity investment:

27 (a) The date on which such investment is initially made; and

28 (b) Each of the six anniversary dates of such date thereafter;

29 (4) "Long-term debt security", any debt instrument issued by a qualified community
30 development entity, at par value or a premium, with an original maturity date of at least seven
31 years from the date of its issuance, with no acceleration of repayment, amortization, or
32 prepayment features prior to its original maturity date, and with no distribution, payment, or
33 interest features related to the profitability of the qualified community development entity or the
34 performance of the qualified community development entity's investment portfolio. The
35 foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument
36 in situations where the issuer has defaulted on covenants designed to ensure compliance with this
37 section or Section 45D of the Internal Revenue Code of 1986, as amended;

38 (5) "Qualified active low-income community business", the meaning given such term
39 in Section 45D of the Internal Revenue Code of 1986, as amended; provided that any business
40 that derives or projects to derive fifteen percent or more of its annual revenue from the rental or
41 sale of real estate shall not be considered to be a qualified active low-income community
42 business;

43 (6) "Qualified community development entity", the meaning given such term in Section
44 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered
45 into an allocation agreement with the Community Development Financial Institutions Fund of
46 the U.S. Treasury Department with respect to credits authorized by Section 45D of the Internal
47 Revenue Code of 1986, as amended, which includes the state of Missouri within the service area
48 set forth in such allocation agreement;

49 (7) "Qualified equity investment", any equity investment in, or long-term debt security
50 issued by, a qualified community development entity that:

51 (a) [Is] **Was** acquired after September 4, 2007, **but before July 1, 2010**, at its original
52 issuance solely in exchange for cash;

53 (b) Has at least eighty-five percent of its cash purchase price used by the issuer to make
54 qualified low-income community investments; and

55 (c) Is designated by the issuer as a qualified equity investment under this subdivision and
56 is certified by the department of economic development as not exceeding the limitation contained
57 in subsection 2 of this section. This term shall include any qualified equity investment that does
58 not meet the provisions of paragraph (a) of this subdivision if such investment was a qualified
59 equity investment in the hands of a prior holder;

60 (8) "Qualified low-income community investment", any capital or equity investment in,
61 or loan to, any qualified active low-income community business. With respect to any one
62 qualified active low-income community business, the maximum amount of qualified low-income
63 community investments made in such business, on a collective basis with all of its affiliates, that
64 may be used from the calculation of any numerator described in subparagraph a. of paragraph
65 (b) of subdivision (1) of this subsection shall be ten million dollars whether issued to one or
66 several qualified community development entities;

67 (9) "Tax credit", a credit against the tax otherwise due under chapter 143, excluding
68 withholding tax imposed in sections 143.191 to 143.265, or otherwise due under section 375.916
69 or chapter 147, 148, or 153;

70 (10) "Taxpayer", any individual or entity subject to the tax imposed in chapter 143,
71 excluding withholding tax imposed in sections 143.191 to 143.265, or the tax imposed in section
72 375.916 or chapter 147, 148, or 153.

73 2. A taxpayer that makes a qualified equity investment earns a vested right to tax credits
74 under this section. On each credit allowance date of such qualified equity investment the
75 taxpayer, or subsequent holder of the qualified equity investment, shall be entitled to a tax credit
76 during the taxable year including such credit allowance date. The tax credit amount shall be
77 equal to the applicable percentage of the adjusted purchase price paid to the issuer of such
78 qualified equity investment. The amount of the tax credit claimed shall not exceed the amount
79 of the taxpayer's state tax liability for the tax year for which the tax credit is claimed. No tax
80 credit claimed under this section shall be refundable or transferable. Tax credits earned by a
81 partnership, limited liability company, S-corporation, or other pass-through entity may be
82 allocated to the partners, members, or shareholders of such entity for their direct use in
83 accordance with the provisions of any agreement among such partners, members, or
84 shareholders. Any amount of tax credit that the taxpayer is prohibited by this section from
85 claiming in a taxable year may be carried forward to any of the taxpayer's five subsequent taxable
86 years. The department of economic development shall limit the monetary amount of qualified
87 equity investments permitted under this section to a level necessary to limit tax credit utilization
88 at no more than twenty-five million dollars of tax credits in any fiscal year. Such limitation on

89 qualified equity investments shall be based on the anticipated utilization of credits without regard
90 to the potential for taxpayers to carry forward tax credits to later tax years.

91 3. The issuer of the qualified equity investment shall certify to the department of
92 economic development the anticipated dollar amount of such investments to be made in this state
93 during the first twelve-month period following the initial credit allowance date. If on the second
94 credit allowance date, the actual dollar amount of such investments is different than the amount
95 estimated, the department of economic development shall adjust the credits arising on the second
96 allowance date to account for such difference.

97 4. The department of economic development shall recapture the tax credit allowed under
98 this section with respect to such qualified equity investment under this section if:

99 (1) Any amount of the federal tax credit available with respect to a qualified equity
100 investment that is eligible for a tax credit under this section is recaptured under Section 45D of
101 the Internal Revenue Code of 1986, as amended; or

102 (2) The issuer redeems or makes principal repayment with respect to a qualified equity
103 investment prior to the seventh anniversary of the issuance of such qualified equity investment.
104 Any tax credit that is subject to recapture shall be recaptured from the taxpayer that claimed the
105 tax credit on a return.

106 5. The department of economic development shall promulgate rules to implement the
107 provisions of this section, including recapture provisions on a scaled proportional basis, and to
108 administer the allocation of tax credits issued for qualified equity investments, which shall be
109 conducted on a first-come, first-serve basis. Any rule or portion of a rule, as that term is defined
110 in section 536.010, that is created under the authority delegated in this section shall become
111 effective only if it complies with and is subject to all of the provisions of chapter 536 and, if
112 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the
113 powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective
114 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of
115 rulemaking authority and any rule proposed or adopted after September 4, 2007, shall be invalid
116 and void.

117 6. [For fiscal years following fiscal year 2010, qualified equity investments shall not be
118 made under this section unless reauthorization is made pursuant to this subsection. For all fiscal
119 years following fiscal year 2010, unless the general assembly adopts a concurrent resolution
120 granting authority to the department of economic development to approve qualified equity
121 investments for the Missouri new markets development program and clearly describing the
122 amount of tax credits available for the next fiscal year, or otherwise complies with the provisions
123 of this subsection, no qualified equity investments may be permitted to be made under this
124 section. The amount of available tax credits contained in such a resolution shall not exceed the

125 limitation provided under subsection 2 of this section. In any year in which the provisions of this
126 section shall sunset pursuant to subsection 7 of this section, reauthorization shall be made by
127 general law and not by concurrent resolution. Nothing in this subsection shall preclude a
128 taxpayer who makes a qualified equity investment prior to the expiration of authority to make
129 qualified equity investments from claiming tax credits relating to such qualified equity
130 investment for each applicable credit allowance date.] **As used in subsections 6 to 12 of this**
131 **section, the following terms shall mean:**

132 **(1) "Applicable percentage", zero percent for each of the first two credit allowance**
133 **dates, eleven percent for the next two credit allowance dates, and twelve percent for the**
134 **next three credit allowance dates;**

135 **(2) "Credit allowance date", with respect to any qualified equity investment:**

136 **(a) The date on which such investment is initially made; and**

137 **(b) Each of the six anniversary dates of such date thereafter;**

138 **(3) "Long-term debt security", any debt instrument issued by a qualified**
139 **community development entity, at par value or a premium, with an original maturity date**
140 **of at least seven years from the date of its issuance, with no acceleration of repayment,**
141 **amortization, or prepayment features prior to its original maturity date. The qualified**
142 **community development entity that issues the debt instrument may not make cash interest**
143 **payments on the debt instrument during the period beginning on the date of issuance and**
144 **ending on the final credit allowance date in an amount that exceeds the cumulative**
145 **operating income, as defined by regulations adopted under Section 45D, Internal Revenue**
146 **Code of 1986, as amended, of the qualified community development entity for that period**
147 **prior to giving effect to the expense of such cash interest payments. The foregoing shall in**
148 **no way limit the holder's ability to accelerate payments on the debt instrument in situations**
149 **where the issuer has defaulted on covenants designed to ensure compliance with this**
150 **section or Section 45D of the Internal Revenue Code of 1986, as amended;**

151 **(4) "Purchase price", the amount paid to the issuer of a qualified equity investment**
152 **for such qualified equity investment;**

153 **(5) "Qualified active low-income community business", the meaning given such**
154 **term in Section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R.**
155 **Section 1.45D-1, but limited to those businesses meeting the SBA size eligibility standards**
156 **established in 13 C.F.R. 121.101-201 at the time the qualified low-income community**
157 **investment is made. A business shall be considered a qualified active low-income**
158 **community business for the duration of the qualified community development entity's**
159 **investment in, or loan to, the business if the entity reasonably expects, at the time it makes**
160 **the investment or loan, that the business will continue to satisfy the requirements for being**

161 a qualified active low-income community business, other than the SBA size standards,
162 throughout the entire period of the investment or loan. The term excludes any business
163 that derives or projects to derive fifteen percent or more of its annual revenue from the
164 rental or sale of real estate. This exclusion does not apply to a business that is controlled
165 by, or under common control with, another business if the second business:

166 (a) does not derive or project to derive fifteen percent or more of its annual revenue
167 from the rental or sale of real estate; and

168 (b) is the primary tenant of the real estate leased from the first business;

169 (6) "Qualified community development entity", the meaning given such term in
170 Section 45D of the Internal Revenue Code of 1986, as amended, provided that such entity
171 has entered into, for the current year or any prior year, an allocation agreement with the
172 Community Development Financial Institutions Fund of the U.S. Treasury Department
173 with respect to credits authorized by Section 45D of the Internal Revenue Code of 1986,
174 as amended, which includes the state of Missouri within the service area set forth in such
175 allocation agreement. The term shall include subsidiary community development entities
176 of any such qualified community development entity;

177 (7) "Qualified equity investment", any equity investment in, or long-term debt
178 security issued by, a qualified community development entity that:

179 (a) Is acquired after August 28, 2013, at its original issuance solely in exchange for
180 cash;

181 (b) Has at least eighty-five percent of its cash purchase price used by the issuer to
182 make qualified low-income community investments by the first anniversary of the initial
183 credit allowance date; and

184 (c) Is designated by the issuer as a qualified equity investment under this
185 subdivision and is certified by the department of economic development as not exceeding
186 the limitation contained in subsection 7 of this section.

187 This term shall include any qualified equity investment that does not meet the provisions
188 of paragraph (a) of this subdivision if such investment was a qualified equity investment
189 in the hands of a prior holder;

190 (8) "Qualified low-income community investment", any capital or equity investment
191 in, or loan to, any qualified active low-income community business;

192 (9) "Tax credit", a credit against the tax otherwise due under chapter 143,
193 excluding withholding tax imposed in sections 143.191 to 143.265, or otherwise due under
194 section 375.916 or chapter 147, 148, or 153;

195 **(10) "Taxpayer", any individual or entity subject to the tax imposed in chapter 143,**
196 **excluding withholding tax imposed in sections 143.191 to 143.265, or the tax imposed in**
197 **section 375.916 or chapter 147, 148, or 153.**

198 **7. Any entity that makes a qualified equity investment earns a vested right to tax**
199 **credits under this section. On each credit allowance date of such qualified equity**
200 **investment, the entity or subsequent holder of the qualified equity investment shall be**
201 **entitled to a tax credit during the taxable year, including such credit allowance date. The**
202 **tax credit amount shall be equal to the applicable percentage of the purchase price paid**
203 **to the issuer of such qualified equity investment. The amount of the tax credit claimed shall**
204 **not exceed the amount of the taxpayer's state tax liability for the tax year for which the tax**
205 **credit is claimed. No tax credit claimed under this section shall be refundable or saleable**
206 **on the open market. Tax credits earned by a partnership, limited liability company, S-**
207 **corporation, or other pass-through entity may be allocated to the partners, members, or**
208 **shareholders of such entity for their direct use in accordance with the provisions of any**
209 **agreement among such partners, members, or shareholders. Any amount of tax credit that**
210 **the taxpayer is prohibited by this section from claiming in a taxable year may be carried**
211 **forward to any of the taxpayer's five subsequent taxable years. The department of**
212 **economic development shall limit the monetary amount of qualified equity investments**
213 **permitted under this section to a level necessary to limit tax credit utilization at no more**
214 **than twenty-five million dollars of tax credits in any fiscal year. Such limitation on**
215 **qualified equity investments shall be based on the anticipated utilization of credits without**
216 **regard to the potential for taxpayers to carry forward tax credits to later tax years.**

217 **8. The issuer of the qualified equity investment shall certify to the department of**
218 **economic development the anticipated dollar amount of such investments to be made in**
219 **this state during the first twelve-month period following the initial credit allowance date.**
220 **If, on the second credit allowance date, the actual dollar amount of such investments is**
221 **different than the amount estimated, the department of economic development shall adjust**
222 **the credits arising on the second allowance date to account for such difference.**

223 **9. The department of economic development shall recapture the tax credit allowed**
224 **under this section with respect to such qualified equity investment under this section if:**

225 **(1) Any amount of the federal tax credit available with respect to a qualified equity**
226 **investment that is eligible for a tax credit under this section is recaptured under Section**
227 **45D of the Internal Revenue Code of 1986, as amended;**

228 **(2) The issuer redeems or makes principal repayment with respect to a qualified**
229 **equity investment prior to the seventh anniversary of the issuance of such qualified equity**

230 investment. Any tax credit that is subject to recapture shall be recaptured from the
231 taxpayer that claimed the tax credit on a return;

232 (3) The issuer fails to invest an amount equal to eighty-five percent of the purchase
233 price of the qualified equity investment in qualified low-income community investments
234 in Missouri within twelve months of the issuance of the qualified equity investment and
235 maintain at least eighty-five percent of such level of investment in qualified low-income
236 community investments in Missouri until the last credit allowance date for the qualified
237 equity investment. For purposes of this section, an investment shall be considered held by
238 an issuer even if the investment has been sold or repaid if the issuer reinvests an amount
239 equal to the capital returned to or recovered by the issuer from the original investment,
240 exclusive of any profits realized, in another qualified low-income community investment
241 within twelve months of the receipt of such capital. An issuer shall not be required to
242 reinvest capital returned from qualified low-income community investments after the
243 earlier of (i) the sixth anniversary of the issuance of the qualified equity investment, the
244 proceeds of which were used to make the qualified low-income community investment, or
245 (ii) the date by which a qualified community development entity has made qualified low-
246 income community investments with the proceeds of such qualified equity investment on
247 a cumulative basis equal to at least one hundred fifty percent of such proceeds. If the
248 requirements of either parts (i) or (ii) of this subdivision are met, the qualified low-income
249 community investment shall be considered held by the issuer through the seventh
250 anniversary of the qualified equity investment's issuance; or

251 (4) At any time prior to the final credit allowance date of a qualified equity
252 investment the issuer uses the cash proceeds of such qualified equity investment to make
253 qualified low-income community investments in any qualified active low-income
254 community business, including affiliated qualified active low-income community
255 businesses, exclusive of reinvestments of capital returned or repaid with respect to earlier
256 investments in such qualified active low-income community business and its affiliates, in
257 excess of twenty-five percent of such cash proceeds.

258

259 Enforcement of each the recapture provisions in subdivisions (1) to (4) of this subsection
260 shall be subject to a six-month cure period. No recapture shall occur until the qualified
261 community development entity shall have been given notice of noncompliance and afforded
262 six months from the date of such notice to cure the noncompliance.

263 10. (1) The department of economic development may promulgate rules to
264 implement the provisions of this section, including recapture provisions on a scaled
265 proportional basis, and to administer the allocation of tax credits issued for qualified

266 equity investments, which shall be conducted on a first-come, first-served basis. Any rule
267 or portion of a rule, as that term is defined in section 536.010, that is created under the
268 authority delegated in this section shall become effective only if it complies with and is
269 subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This
270 section and chapter 536 are nonseverable, and if any of the powers vested with the general
271 assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove
272 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking
273 authority and any rule proposed or adopted after August 28, 2013, shall be invalid and
274 void.

275 (2) A qualified community development entity that seeks to have an equity
276 investment or long-term debt security designated as a qualified equity investment and
277 eligible for tax credits under this section shall pay a fee in the amount of one half of one
278 percent of the amount of the equity investment or long-term debt security requested to be
279 designated as a qualified equity investment to the department for deposit in the “New
280 Markets Performance Guarantee Fund”, which is hereby established. The entity shall
281 forfeit the fee in its entirety if the qualified community development entity or any
282 subsidiary qualified community development entity that issues a qualified equity
283 investment certified under this section fails to invest an amount equal to eighty-five percent
284 of the purchase price of the qualified equity investment in qualified low-income community
285 investments in Missouri within twelve months of the issuance of the qualified equity
286 investment. Forfeiture of the fee under this subdivision shall be subject to the six-month
287 cure period established under subdivision (5) of subsection 9 of this section.

288 (3) The fee required under subdivision (2) of this subsection shall be paid to the
289 department and held in the New Markets Performance Guarantee Fund until such time
290 as compliance with the provisions of this subsection shall have been established. The
291 qualified community development entity may request a refund of the fee from the
292 department no sooner than thirty days after having met the requirements of subdivision
293 (2) of this subsection. The department shall have thirty days to comply with such request
294 or give notice of noncompliance.

295 11. (1) After a qualified equity investment is designated as such by the department
296 of economic development the investment shall be deemed “bound”. A qualified equity
297 investment may not be unbound unless all of the requirements of subdivision (2) of this
298 subsection have been met. Until all qualified equity investments issued by a qualified
299 community development entity are unbound under this subsection, the qualified
300 community development entity shall not be entitled to distribute to its equity holders or

301 make cash payments on long-term debt securities that have been designated as qualified
302 equity investments in an amount that exceeds the sum of:

303 (a) The cumulative operating income, as defined by regulations adopted under
304 Section 45D, Internal Revenue Code of 1986, as amended, earned by the qualified
305 community development entity since issuance of the qualified equity investment, prior to
306 giving effect to any expense from the payment of interest on long-term debt securities
307 designated as qualified equity investments; and

308 (b) Fifty percent of the purchase price of the qualified equity investments issued by
309 the qualified community development entity.

310 (2) To be unbound, a qualified equity investment shall:

311 (a) Be beyond its seventh credit allowance date;

312 (b) Have been in compliance with subsection 9 of this section up through its seventh
313 credit allowance date; and

314 (c) Have had its proceeds invested in qualified active low-income community
315 investments such that the total qualified active low-income community investments made,
316 cumulatively including reinvestments, exceeds one hundred fifty percent of its qualified
317 equity investment.

318 (3) A community development entity that seeks to have a qualified equity investment
319 unbound under this section shall send notice to the department of economic development
320 of its request to be unbound along with evidence supporting the request. The provisions
321 of paragraph (b) of subdivision (2) of this subsection shall be deemed to be met if no
322 recapture action has been commenced by the department of economic development as of
323 the seventh credit allowance date. Such request shall not be unreasonably denied and shall
324 be responded to within thirty days of receiving the request. If the request is denied for any
325 reason, the burden of proof shall be on the department in any administrative or legal
326 proceeding that follows.

327 12. No qualified community development entity shall be entitled to pay to any
328 affiliate of such qualified community development entity any fees in connection with any
329 activity under this section prior to being unbound under subsection 11 of this section of all
330 qualified equity investments issued by such qualified community development entity. The
331 foregoing shall not prohibit a qualified community development entity from allocating or
332 distributing income earned by it to such affiliates or paying reasonable interest on amounts
333 lent to the qualified community development entity by such affiliates.

334 13. Subsections 1 to 5 of this section shall apply to qualified equity investments
335 made after September 4, 2007, but before July 1, 2010.

336 **14. Subsections 6 to 12 of this section shall apply to qualified equity investments**
337 **made after August 28, 2013.**

338 [7.] **15.** Under section 23.253 of the Missouri sunset act:

339 (1) The provisions of the new program authorized under this section shall automatically
340 sunset six years after [September 4, 2007] **August 28, 2013**, unless reauthorized by an act of the
341 general assembly; and

342 (2) If such program is reauthorized, the program authorized under this section shall
343 automatically sunset twelve years after the effective date of the reauthorization of this section;
344 and

345 (3) This section shall terminate on September first of the calendar year immediately
346 following the calendar year in which the program authorized under this section is sunset.
347 However, nothing in this subsection shall preclude a taxpayer who makes a qualified equity
348 investment prior to sunset of this section under the provisions of section 23.253 from claiming
349 tax credits relating to such qualified equity investment for each credit allowance date.

✓