AMENDED

April 9, 2019

**H. 3998**

Introduced by Reps. Bannister, Bernstein, Crawford, Pendarvis, Garvin, Herbkersman, Hosey, Alexander, Bales, Stavrinakis, Cogswell, Whitmire, Norrell, Cobb‑Hunter, Dillard, Elliott, Moore, Mack, Rutherford, Govan, Bennett, Clemmons, Funderburk, Hayes, McDaniel, Ridgeway, G.M. Smith, G.R. Smith, Sottile, Weeks, Wheeler, S. Williams, Davis, Rivers, Brown, Jefferson, R. Williams, Henderson‑Myers, Simmons and Gilliard

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Read the first time February 19, 2019.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by House Ways and Means on March 27, 2019**

**State Expenditure**

This bill establishes the Workforce and Senior Affordable Housing Act to create a tax credit for qualified low-income housing projects. The tax credit is based upon the federal housing tax credit provided in Internal Revenue Code (IRC) §42. The bill specifies that the S.C. Housing may promulgate regulations necessary to implement and administer the provisions of the section. S.C. Housing currently provides support to the Internal Revenue Service in administering the federal tax credits for South Carolina. As the specifications for a qualified project are defined in IRC §42, and the tax credit amount is based upon the federal credit, we do not anticipate that this bill will impact expenditures for S.C. Housing. Further, we anticipate that since the Department of Revenue and Department of Insurance are tasked with administering income tax, corporate license fees, bank tax, and insurance tax, these agencies will provide the necessary coordination with S.C. Housing to implement the credits in the normal course of agency business. Therefore, the bill is not expected to impact State expenditures.

**State Revenue**

This bill establishes the Workforce and Senior Affordable Housing Act to create a tax credit for qualified low-income housing projects. The tax credit is based upon the federal housing tax credit as provided in IRC §42 and is available for any qualified project, as defined in §42, placed in service in South Carolina after January 1, 2020. The amount of the credit is equal to the federal housing tax credit allowed for the qualified project and applies to tax years after 2019.

A qualifying taxpayer must be a sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity that is subject to South Carolina taxes pursuant to §12-6- 510 (individual income tax), §12-6-530 (corporate income tax), Chapter 11 of Title 12 (bank tax), or Chapter 7 of Title 38 (insurance premium tax). The credit may be claimed against income tax, corporate income tax or license fees, bank taxes, or insurance premium taxes. The total amount of the credit may not exceed the taxpayer’s income tax liability. Any unused credits may be carried forward for five tax years. The bill also requires that if any portion of a federal housing tax credit is required to be recaptured, the portion of the state credit related to the project is also subject to recapture.

The IRC §42 Low Income Housing Tax Credit (LIHTC) Program was enacted by Congress as part of the Tax Reform Act of 1986 to encourage new construction and rehabilitation of existing buildings as low-income rental housing for households with income at or below specified income levels. The program is jointly administered by the IRS and state-authorized tax credit allocating agencies.

Under IRC §42, the taxpayer agrees to provide low-income housing for at least thirty years.

 In exchange for the investment in low-income housing, the taxpayer will receive tax credits for each of ten years, which is known as the "credit period."

 To keep the credit, the taxpayer must provide low-income housing for fifteen years, which is known as the "compliance period." Failure to maintain the housing in compliance with IRC §42 requirements for the entire compliance period can result in the recapture of a portion of the credit allowable in prior years.

 After IRS jurisdiction ends, the state agency has sole jurisdiction and the taxpayer must continue to provide low-income housing for at least another fifteen years. The "extended use period" is at least 30 years, beginning with the first year of the credit period.

All three time periods begin on the same day; i.e., the first day of the tax year in which the building is placed in service, or if the taxpayer elects, the beginning of the following tax year.

Two types of LIHTCs are available depending on the nature of the construction project. The referenced 9 percent credit is generally reserved for new construction, while the 4 percent credit is typically used for rehabilitation projects and new construction that is financed with tax-exempt bonds. Each year, for 10 years, a tax credit equal to roughly 4 percent or 9 percent of a project’s qualified basis (cost of construction) is claimed. Each state receives an allocation for 9 percent tax credits on an annual basis. Under IRC §42(h)(3), the amount of credit available to the state for allocation to taxpayers for any calendar year is the "credit ceiling." According to a report by the Congressional Research Service, in 2019, states received an LIHTC allocation of $2.75625 per person, with a minimum small population state allocation of $3,166,875. These amounts reflect a temporary increase in the amount of credits each state received as a result of the 2018 Consolidated Appropriations Act (P.L. 115-141). The increase is equal to 12.5 percent above what states would have received absent P.L. 115-141, and is in effect through 2021. The state allocation limits do not apply to the 4 percent credits, which are automatically packaged with tax-exempt bond financed projects.

SC Housing provided data regarding awards for LIHTCs for 2016, 2017, and 2018 as shown below. Based upon these values, we anticipate that credits awards will average $20,570,000 through 2021 due to the higher ceiling, although this amount may vary depending on the state allocation. These credits must be claimed equally over the ten-year credit period.

**SC Housing Credit Awards**

Year Program Tax Credit Amount

2016 9% LIHTC $12,271,707.00

2016 4% LIHTC $1,665,635.00

2017 9% LIHTC $11,443,396.00

2017 4% LIHTC $3,524,086.00

2018 9% LIHTC $13,637,217.00

2018 4% LIHTC $6,930,816.00

Section 4 of the bill as amended specifies that the project must be placed in service after January 1, 2020. Based upon conversations with SC Housing, construction for projects typically takes one to two years after approval of the credits, and credits awarded during the 2018 process are expected to be in service one to two years after approval. Therefore, we would expect that the projects placed in service after January 1, 2020 will be claiming approximately one-tenth of the credits approved for 2018. This would result in tax credits of approximately $2,057,000 in tax year 2020. This would reduce general fund individual income tax, corporate income tax or license fees, bank tax, or insurance premium taxes by $2,057,000 beginning in FY 2020-21. As additional projects are placed in service, the tax credits will continue to grow annually by an additional $2,057,000 per year for ten years until FY 2029-30 when the full cycle of tax credits is in place, for a cumulative general fund reduction of approximately $20,570,000 in FY 2029-30. However, any unused credits may be carried forward for five tax years, and the timing of the impact may vary if taxpayers do not have sufficient tax liability to claim the credit in the year allowed.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “‘WORKFORCE AND SENIOR AFFORDABLE HOUSING ACT” BY ADDING SECTION 12‑6‑3795 SO AS TO ALLOW A TAXPAYER ELIGIBLE FOR A FEDERAL LOW‑INCOME HOUSING TAX CREDIT TO CLAIM A LOW‑INCOME STATE TAX CREDIT.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Workforce and Senior Affordable Housing Act”.

SECTION 2. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

“Section 12‑6‑3795. (A) As used in this section:

(1) ‘Eligibility statement’ means a statement authorized and issued by the South Carolina Housing and Finance Development Authority certifying that a given project qualifies for the South Carolina housing tax credit. The authority shall promulgate rules establishing criteria upon which the eligibility statements are issued which must include consideration of evidence of local support for the project. The eligibility statement must specify the amount of the South Carolina housing tax credit allowed.

(2) ‘Federal housing tax credit’ means the federal tax credit as provided in Section 42 of the Internal Revenue Code of 1986, as amended.

(3) ‘Median income’ means those incomes that are determined by the federal Department of Housing and Urban Development guidelines and adjusted for family size.

(4) ‘Project’ means a housing project that has restricted rents that do not exceed thirty percent of median income for at least forty percent of its units occupied by persons or families having incomes of sixty percent or less of the median income, or at least twenty percent of the units occupied by persons or families having incomes of fifty percent or less of the median income.

(5) ‘Qualified project’ means a qualified low‑income building as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended, that is located in South Carolina and receives approval for tax credits from the South Carolina Housing and Finance Development Authority provided pursuant to this section.

(6) ‘Taxpayer’ means a sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity that is subject to South Carolina taxes pursuant to Section 12-6-510, Section 12-6-530, Chapter 11, Title 12, or Chapter 7, Title 38.

(B)(1) A state tax credit pursuant to this section may be claimed against income taxes imposed by Section 12-6-510 or 12-6-530, bank taxes imposed pursuant to Chapter 11, Title 12, corporate license fees imposed pursuant to Chapter 20, Title 12, and insurance premium and retaliatory taxes imposed pursuant to Chapter 7, Title 38, to be termed the South Carolina housing tax credit, and is allowed with respect to each qualified project placed in service after January 1, 2020, in an amount equal to the federal housing tax credit allowed with respect to such qualified project. In computing a tax payable by a taxpayer pursuant to Section 38-7-90, the credit allowed pursuant to this section must be treated as a premium tax paid pursuant to Section 38-7-20.

(2)(a) If under Section 42 of the Internal Revenue Code of 1986, as amended, a portion of any federal housing tax credit taken on a project is required to be recaptured, the taxpayer claiming any state tax credit with respect to such project is also required to recapture a portion of any state tax credit authorized by this section. The state recapture amount is equal to the proportion of the state tax credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal housing tax credit amount subject to recapture.

(b) In the event that recapture of any South Carolina housing tax credit is required, any amended return submitted to the department, as provided in this section, shall include the proportion of the state tax credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of tax credit previously allocated to such taxpayer.

(3) The total amount of the tax credit allowed by section for a taxable year may not exceed the taxpayer’s income tax liability. Any unused tax credit may be carried forward to apply to the taxpayer’s next five succeeding years’ tax liability. The taxpayer may not apply the credit against any prior tax years’ tax liability.

(4) The tax credit allowed by this section, and any recaptured tax credit, must be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, regardless of whether such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project.

(C) The department, in consultation with the South Carolina State Housing Finance and Development Authority, may adopt rules and policies necessary to implement and administer the provisions of this section.

(D) Notwithstanding any other provision of law, once a qualified project becomes eligible for the credit allowed by this section, for that year and for the next ten calendar years, all property that makes up the qualified project is exempt from all fees and taxes imposed by the municipality in which it is located, including, but not limited to: property taxes, impact fees, development fees, sewer fees, wastewater fees, sanitation fees, infrastructure fees, administrative fees, permit fees, and planning fees.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor and first applies to qualified projects that receive an eligibility statement pursuant to Section 12-6-3795 thereafter.

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