**A** **BILL**

TO AMEND SECTION 12‑6‑3795, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA HOUSING TAX CREDIT, SO AS TO DEFINE TERMS AND LIMIT THE CREDIT; TO AMEND ARTICLE 3 OF CHAPTER 11, TITLE 1, RELATING TO THE ALLOCATION OF STATE CEILING ON ISSUANCE OF PRIVATE ACTIVITY BONDS, SO AS TO REQUIRE THE STATE FISCAL ACCOUNTABILITY AUTHORITY TO DEVELOP A STATE CEILING ALLOCATION PLAN ANNUALLY, TO SPECIFY REQUIREMENTS OF THE PLAN, AND TO PROVIDE A PROCESS FOR PERIODIC ALLOCATIONS OF THE STATE CEILING; AND TO REPEAL SECTION 1‑11‑370 RELATING TO INDEBTEDNESS INCLUDED WITHIN ANY LIMITS ON PRIVATE ACTIVITY BONDS.

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

SECTION 1. A. Section 12‑6‑3795 of the 1976 Code, as added by Act 137 of 2020, is amended to read:

“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.

(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 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.

(7) ‘New construction tax credit’ means the federal housing tax credit applicable to new construction and intended to deliver up to a seventy percent federal subsidy, sometimes referred to as the nine percent low‑income housing tax credit.

(8) ‘Rehabilitation tax credit’ means the federal housing tax credit applicable to rehabilitation projects utilizing federally tax‑exempt bond financing and intended to deliver up to a thirty percent subsidy, sometimes referred to as the four percent low‑income housing tax credit.

(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, and before December 31, 2030, in an amount ~~equal~~ not to exceed the federal housing tax credit allowed with respect to such qualified project, subject to the limitations of item (5). 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~~ South Carolina housing tax credit with respect to such project also is required to recapture a portion of any ~~state~~ South Carolina housing tax credit authorized by this section. The state recapture amount is equal to the proportion of the ~~state~~ South Carolina housing 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~~ South Carolina housing tax credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of South Carolina housing tax credit previously allocated to such taxpayer.

(3) The total amount of the South Carolina housing tax credit allowed by this section for a taxable year may not exceed the taxpayer’s income tax liability. Any unused South Carolina housing 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 South Carolina housing 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.

(5)(a) The South Carolina housing tax credit allowed for any project must supplement but not supplant the federal housing tax credit and must be limited to an amount necessary only to achieve financial feasibility of the project.

(b) The South Carolina housing tax credit is only allowed for a project utilizing the rehabilitation tax credit, and is conditioned among other things on availability and allocation to the extent necessary for the project of any state ceiling made pursuant to Article 3, Chapter 11, Title 1.

(c) No South Carolina housing tax credit is allowed for any housing project utilizing the new construction tax credit.

(d) The total amount of all South Carolina housing tax credits that may be allocated in any fiscal year must not exceed fifteen million dollars.

(C)(1) 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) The authority may not issue an eligibility statement until the taxpayer provides a report to the authority detailing how the ~~state~~ South Carolina housing tax credit ~~authorized by this section~~ will benefit the tenants of the project, once placed in service, ~~including, but not limited to,~~ without limitation reduced rent, ~~or~~ and why the ~~state~~ South Carolina housing tax credit ~~authorized by this section~~ is ~~necessary to undertake~~ essential to the financial feasibility of the project.

(3) The authority must establish uniform criteria for allocating the South Carolina housing tax credit to eligible projects pursuant to a competitive process that promotes highest value and greatest public benefit. The authority may, but need not, establish the criteria required by this section as part of any qualified allocation plan adopted to administer the federal low‑income housing tax credit. The criteria established pursuant to this section, and any qualified allocation plan whether or not applicable to administration of the South Carolina housing tax credit, are subject to the prior review and comment of the Joint Bond Review Committee.

(4) The authority must furnish no later than July thirty‑first of each year an annual report of South Carolina housing tax credits allocated pursuant to this section, which must include the total amount of tax credits allocated, and for each project, the project name and location, the amount of the South Carolina housing tax credits allocated to the project, project ownership, total number of units assisted, and the public benefit achieved by the project. The annual report must be furnished to the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Finance Committee, the Chairman of the House of Representatives Ways and Means Committee, the Joint Bond Review Committee, and the State Fiscal Accountability Authority.

(D) 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.

(E) Notwithstanding any other provision of law, the provisions of this section and administration thereof are subject to the oversight, and review and comment as appropriate, of the Joint Bond Review Committee.”

B. This SECTION takes effect upon approval by the Governor and first applies to tax years beginning after 2021.

SECTION 2. Article 3, Chapter 11, Title 1, of the 1976 Code is amended to read:

“Article 3

Allocation of State Ceiling on Issuance of Private Activity Bonds

Section 1‑11‑500. The state ceiling on the issuance of private activity bonds as defined in Section 146 of the Internal Revenue Code of 1986 ~~(the Code)~~ established in the act must be certified annually by the Secretary of the State Fiscal Accountability Authority ~~secretary~~ (the state authority) based upon the provisions of the act. The ~~board~~ secretary of the state authority shall make this certification as soon as practicable after the estimates of the population of the State of South Carolina to be used in the calculation are published by the United States Bureau of the Census but in no event later than February first of each calendar year.

Section 1‑11‑510. (A) The private activity bond limit for all issuing authorities must be allocated by the ~~board~~ state authority in response to authorized requests as described in Section 1‑11‑530 by the issuing authorities, or as otherwise provided in Section 1‑11‑520(G).

(B) The aggregate private activity bond limit amount for all South Carolina issuing authorities is allocated initially to the State for further allocation within the limits prescribed herein.

(C) ~~Except as is provided in Section 1‑11‑540, all allocations must be made by the board on a first‑come, first‑served basis, to be determined by the date and time sequence in which complete authorized requests are received by the board secretary~~ Nothing in this article or the State Ceiling Allocation Plan adopted pursuant to this article grants any rights to, or in the processes used in the allocation or disposition of, state ceiling. Decisions made pursuant to this article are final and are not subject to judicial or administrative review.

Section 1‑11‑520. (A) ~~The private activity bond limit for all state government issuing authorities now or hereafter authorized to issue private activity bonds as defined in the act, to be known as the "state government pool", is forty percent of the state ceiling less any amount shifted to the local pool as described in subsection (B) of this section or plus any amount shifted from that pool~~ No later than September thirtieth of the year preceding the calendar year to which the state ceiling applies, and subject to review and comment by the Joint Bond Review Committee, the state authority must publish a State Ceiling Allocation Plan that assigns percentages of the state ceiling to categories of any of the permitted purposes prescribed by the Internal Revenue Code. Without limitation, categories of permitted purposes may include industrial and economic development bonds; single family housing bonds; multifamily housing bonds; student loan bonds; and any other bonds eligible for tax exemption as a private activity bond pursuant to the Internal Revenue Code. No assignment to any single category may exceed forty percent of the state ceiling, and no minimum assignment is required for any category.

(B) ~~The private activity bond limit for all issuing authorities other than state government agencies, to be known as the "local pool", is sixty percent of the state ceiling plus any amount shifted from the state government pool or less any amount shifted to that pool~~ Further, the allocation plan must provide for a process of periodic allocations of the state ceiling, which for any period generally may not exceed an amount of the state ceiling equally divided among the number of periods in the year during which allocations are to be made; provided, however, that the state authority may, upon findings of exceptional and compelling circumstances, amend the annual allocation plan following review and comment by the committee.

(C) ~~The board, with review and comment by the Joint Bond Review Committee, may shift unallocated amounts from one pool to the other at any time~~ Notwithstanding the assigned percentages set forth in the allocation plan, the state authority may but need not reassign any state ceiling unused in prior periods as a supplement to and means to address demand for ceiling allocation in a subsequent period. Such re‑assignment may be made for any allocation category, notwithstanding its original assignment.

(D) Unless otherwise approved in writing by the state authority following justification and substantial findings of significance, no authorized request may receive an allocation of state ceiling applicable to that calendar year exceeding ten percent in the case of an industrial or economic development project, or five percent for any other allocation category.

(E) The allocation plan must establish competitive criteria for allocation of state ceiling to authorized requests. Competitive criteria may be unique to each category but must be uniform and established to achieve highest value and greatest public benefit. The state authority may utilize the services of the South Carolina Department of Commerce for industrial or economic development projects; the South Carolina State Housing Finance and Development Authority for single family and multifamily housing projects; and any other state agencies and public and private resources to inform and provide services for the development of the allocation plan, including the evaluation and competitive criteria; and the periodic evaluation of authorized requests. The Department of Commerce and the State Housing Finance and Development Authority are directed to provide to the state authority such assistance as may be requested or required to accomplish the purposes of the article.

(F) Allocations of state ceiling to authorized requests must be made in accordance with the provisions of the allocation plan and policies and procedures adopted by the state authority.

(G) The state authority must determine the disposition of any remaining, unused state ceiling during the final period of the calendar year to which the state ceiling applies. Such disposition is not subject to the requirements of subsections (D), (E), and (F).

Section 1‑11‑530. (A) For private activity bonds proposed for issue by other than state government issuing authorities, an authorized request is a request included in a petition to the ~~board~~ state authority that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by: (i) a copy of the Inducement Contract, Inducement Resolution, or other comparable preliminary approval entered into or adopted by the issuing authority, if any, relating to the bonds~~. The board shall forward promptly to the committee a copy of each petition received~~, and (ii) such other supporting documentation as the state authority may by policy prescribe.

(B) For private activity bonds proposed for issue by any state government issuing authority, an authorized request is a request included in a petition to the ~~board~~ state authority that a specific amount of the state ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by: (i) a bond resolution or comparable action by the issuing authority authorizing the issuance of the bonds~~. The board shall forward promptly to the committee a copy of each petition received~~, and (ii) such other supporting documentation as the state authority may by policy prescribe.

(C) Each authorized request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project.

(D) An issuing authority seeking an allocation of unused state ceiling for carry‑forward designation must submit to the state authority a petition identifying the types of tax‑exempt bonds to which the carryforward designation will apply. The petition must be accompanied by such other supporting documentation as the state authority may by policy prescribe.

(E) Notwithstanding any other provision of this article, the state authority may disapprove, reduce, or defer any authorized request.

(F) The state authority must periodically furnish to the Joint Bond Review Committee a report of petitions received, along with their dispositions.

Section 1‑11‑540. ~~(A)~~ ~~The board, with review and comment by the committee, may disapprove, reduce, or defer any authorized request. If it becomes necessary to exercise this authority, the board and the committee shall take into account the public interest in promoting economic growth and job creation.~~

~~(B)~~ ~~Authorized requests for state ceiling allocations of more than ten million dollars for a single project are deferred until after July first unless the board, after review and comment by the committee, determines in any particular instance that the positive impact upon the State of approving an allocation of an amount greater than ten million dollars is of such significance that approval of the allocation is warranted~~ Reserved.

Section 1‑11‑550. (A) An allocation of the state ceiling approved by the ~~board~~ state authority is made formal initially by a certificate which allocates tentatively a specific amount of the state ceiling to the bonds for which the allocation is requested. This tentative allocation certificate must specify the state ceiling amount allocated, the issuing authority and the project involved, and the time period during which the tentative allocation is valid. This certificate must remind the issuing authority that the tentative allocation is made final after the issuing authority chairman or other duly authorized official or agent of the issuing authority, before the issue is made, certifies the issue amount and the projected date of issue, as is required by subsection (B) of this section. It also may include other information considered relevant by the ~~board~~ secretary of the state authority.

(B) The chairman or other authorized official or agent of an issuing authority issuing any private activity bond for which a portion of the state ceiling has been allocated tentatively shall execute and deliver to the ~~board~~ secretary of the state authority an issue amount certificate setting forth the exact amount of bonds to be issued and the projected bond issue date which date must not be more than ten business days after the date of the issue amount certificate and it must be before the state ceiling allocation involved expires. The issue amount certificate may be an executed copy of the appropriate completed ~~Internal Revenue Service~~ form to be submitted to the Internal Revenue Service on the issue or it may be in the form of a letter which certifies the exact amount of bonds to be issued and the projected date of the issue.

(C) In response to the issuing authority’s issue amount certificate required by subsection (B) of this section, the ~~board~~ secretary of the state authority is authorized to issue and, as may be necessary, to revise a certificate making final the ceiling allocation ~~approved~~ previously approved by the ~~board~~ state authority on a tentative basis, if the secretary of the state authority determines that:

(1) the issuing authority’s issue amount certificate specifies an amount not in excess of the approved tentative ceiling allocation amount;

(2) the issue amount certificate was received prior to the issue date projected and that the certificate is dated not more than ten days prior to the issue date projected; provided, however, that if an issue amount certificate is dated more than ten days prior to the date of issue of the bonds, such certificate shall be void, and a new request must be provided to the secretary of the state authority prior to issuance of the bonds;

(3) the issue date projected is within the time period approved previously for the tentative ceiling allocation; and

(4) the bonds when issued and combined with the total amount of bonds requiring a ceiling allocation included in issue amount certificates ~~submitted~~ previously submitted to the ~~board~~ state authority by issuing authorities do not exceed the state ceiling for the calendar year. Except under extraordinary circumstances, the ~~board~~ secretary of the state authority shall issue this certificate within two business days following the date the issue amount certificate is received.

(D) In accordance with Section 149(e)(2)(F) of the Internal Revenue Code, the secretary of the ~~State Fiscal Accountability Authority~~ state authority is designated as the state official responsible for certifying, if applicable, that certain bonds meet the requirements of Section 146 of the Internal Revenue Code relating to the volume cap on private activity bonds.

(E) Any tentative or final state ceiling allocation granted by the ~~board~~ state authority before the effective date of this act remains valid as an allocation of a portion of the volume cap for South Carolina provided under Section 146 of the Internal Revenue Code. The allocations expire in accordance with the ~~regulations~~ law under which they were granted or extended and their validity may be extended or reinstated in accordance with the provisions of Sections 1‑11‑500 through 1‑11‑570.

Section 1‑11‑560. (A) Any state ceiling allocation approved by the ~~board~~ state authority is valid only for the calendar year in which it is approved, unless eligible and approved for carry‑forward election or unless specified differently in the ~~board~~ certificates required by Section 1‑11‑550.

(B) Unless eligible and approved for carry‑forward election or unless specified differently in ~~board~~ certificates required by Section 1‑11‑550, each state ceiling allocation expires automatically if the bonds for which the allocation is made are not issued within ninety consecutive calendar days from the date the allocation is approved by the ~~board~~ state authority.

(C) In response to a written request by the chairman or other duly authorized official or agent of an issuing authority, the ~~board~~ state authority, acting during the period an approved allocation is valid, may but need not extend the period in which an allocation is valid in a single calendar year by thirty‑one consecutive calendar days to a total of not more than one hundred twenty‑one consecutive calendar days.

(D) In response to a written request by the chairman or other authorized official or agent of an issuing authority, the ~~board~~ state authority may but need not reinstate for a period of not more than thirty‑one consecutive calendar days in any one calendar year part or all of an allocation approved but not extended previously in accordance with subsection (C) of this section in that same calendar year which has expired. The reinstatement request must certify that the authorized request ~~submitted~~ previously submitted is still true and correct or a new authorized request must be submitted.

(E) A tentative ceiling allocation is canceled automatically if the chairman or other authorized official or agent of the issuing authority ~~involved~~ fails to deliver the issue amount certificate required by Section 1‑11‑550 to the ~~board~~ secretary of the state authority before the bonds for which the allocation is made are issued.

(F) The chairman or other authorized official or agent of an issuing authority shall advise the ~~board~~ secretary of the state authority in writing as soon as is practicable after a decision is made not to issue bonds for which a portion of the state ceiling has been allocated. All notices of relinquishment of ceiling allocations must be entered promptly in the ~~board’s~~ state authority’s records by the ~~board~~ secretary of the state authority.

(G) Ceiling allocations which are eligible and approved for carry‑forward election are not subject to the validity limits of this section. The ~~board~~ state authority shall join with the issuing authorities involved in carry‑forward election statements to meet the requirements of the Internal Revenue Service.

Section 1‑11‑570. The ~~State Fiscal Accountability Authority, after review and comment by the committee,~~ state authority may adopt ~~the~~ policies and procedures ~~it considers~~ necessary ~~for the equitable~~ to implement and administer the provisions of this article. All such policies and ~~effective administration of Sections 1‑11‑500 through 1‑11‑570~~ procedures, and any changes thereto, are subject to review and comment by the Joint Bond Review Committee.

Section 1‑11‑580. The State Fiscal Accountability Authority shall make quarterly payments on insurance contracts where the annual premium exceeds fifty thousand dollars. The board shall undertake necessary negotiations to implement this requirement. Where fees may be incurred for quarterly rather than annual payments, the State Fiscal Accountability Authority shall determine whether the investment income opportunity is greater or less than proposed fees and shall make the decision which best benefits South Carolina.”

SECTION 3. Section 1‑11‑370 of the 1976 Code is repealed.

SECTION 4. The provisions of Article 3, Chapter 11, Title 1 of the 1976 Code relating to the allocation of state ceiling on issuance of private activity bonds, as amended in this act, shall control if there is any conflict with any other provision of law or regulation, specifically including Regulation 19‑103.

SECTION 5. 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 6. The provisions of this act are effective for allocations of state ceiling beginning January 1, 2022, and thereafter. For the first year of implementation, the state authority may adopt such special procedures as may be necessary to effect the requirements of this act.

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