

**WASHINGTON WIRE****What the Mid-Term Elections Hold for the Tax Credit Community**

By Michael J. Novogradac, CPA

This month lawmakers headed to their home states and districts for a work period that is scheduled to last until September 10. Among other activities, many of them will be campaigning in advance of the November mid-term elections. Voters will cast ballots in November for 37 of 100 Senate seats and all 435 House seats.

Thirty-four of the Senate seats up for election are for six-year terms, beginning January 3, 2011, and ending in January 2017. The other three races are for shorter terms; the senator elected in Delaware will serve a term ending in January 2015 and the term for the senator elected in New York will end January 2013. A special election in West Virginia will be held on November 2 to fill the seat of Sen. Robert C. Byrd, who passed away on June 28. The winner of the special election would serve the remainder of the term ending January 3, 2013. Also in the Senate, a special election was held in Massachusetts on January 19 for a 38th seat, for a term that ends in January 2013. Going into the election, the Senate is composed of 57 Democrats, 41 Republicans and two Independents who caucus with the Democrats. Of the seats that are up for election in 2010, 19 are held by Democrats, six of whom are retiring in 2010 and one who lost in the primary, leaving 12 incumbents who are running for re-election. The balance of the seats up for election are held by Republicans, six of whom are retiring and one who lost in the primary, leaving 11 incumbents who are running for re-election.

Elections will be held for all 435 seats in House of Representatives, representing all 50 states, as well as for the delegates from the District of Columbia and four of the five major U.S. territories. The only seat in the House not up for election

is that of the Resident Commissioner of Puerto Rico, who serves a four-year term and will next face election in 2012. Of the 435 House seats, 157 Republican incumbents are running for re-election and 22 Republican seats are open, while 237 Democratic incumbents are running for re-election and 19 seats are open.



There is a lot of speculation about whether the balance of power between Republicans and Democrats will shift in Congress. At the time of this writing nearly all insiders are predicting that the number of Democrats will decrease in the House. The major question appears to be by how much.

Peter Lawrence, senior policy director at Enterprise Community Partners and secretary of the Affordable Housing Tax Credit Coalition (AHTCC), has said the potential impact of the election is uncertain. "We're not exactly sure what the election will bring in terms of changes in tax credit policy," he said.

**Low-Income Housing Tax Credit**

David Gasson, executive director of the Housing Advisory Group, said there are expectations that Republicans will pick up seats in the House. "If that happens, it will be difficult for the affordable housing industry to be on offense for things we'd like to see for the [LIHTC] program," Gasson said. "We do not have the Republican side of the House."

*continued from page 1*

However, Gasson noted that while House Minority Leader John Boehner of Ohio has not demonstrated support for the LIHTC program, some House Republicans such as Reps. Dave Camp of Michigan and Erik Cantor of Virginia have been supportive of the LIHTC. Lawrence also notes that historically, the LIHTC has enjoyed some level of bipartisan support. "We've had this very bipartisan history and we certainly trust that it will continue," Lawrence said. "It is a very effective public/private partnership program."

Robert M. Rozen, Ernst & Young's Washington counsel, cautioned that it's too early to tell what the effect of the elections will be but he agrees with Lawrence that the LIHTC is unlikely to suffer significantly as a result of any potential shift of control between parties.

"The history is that it's an issue that Democrats care about more than Republicans. There's going to be fewer Democrats, so it's safe to say there will be less support for affordable housing issues," Rozen said. However, he continued, "The housing credit program has always had strong bipartisan support but we've probably most recently had more support on the Democrat side. We don't have anything to fear in actions against the program. The question is to what extent we'll have a positive agenda to make changes in the program."

Gasson noted some specific contests such as those of Sen. Blanche Lincoln of Arkansas and Rep. Barney Frank of Massachusetts as tough races with some potential impact on the tax credit community. Both lawmakers have been actively supportive of the LIHTC as well as other tax credits.

### **New Markets Tax Credits**

Sen. Lincoln, who is running for re-election as an incumbent, co-sponsored legislation to extend the new markets tax credit (NMTC) program with Sens. Olympia Snowe of Maine and Debbie Stabenow of Michigan. Neither Snowe nor Stabenow are up for re-election this year. Other supporters of the NMTC in Congress include Sen. Jay Rockefeller of West Virginia, whose seat is not up for re-election, and Rep. Richard Neal of Massachusetts, who is running as the incumbent in his district.

The NMTC is losing one supporter to retirement in Sen. George LeMieux, D-Fla. Sen. LeMieux is one of a bipartisan group of six lawmakers that recently proposed a package of tax incentives to provide relief for struggling small businesses along the Gulf Coast. He was joined by Sen. Mary Landrieu, D-La., Sen. Bill Nelson, D-Fla., Sen. Roger Wicker, R-Miss., and Sen. David Vitter, R-La., in proposing a special allocation of NMTCs for the oil spill recovery zone. Sen. Vitter is running for re-election as an incumbent.

*continued on page 3*

## **Novogradac Journal of Tax Credits Editorial Board**

### **PUBLISHER**

Michael J. Novogradac, CPA

### **MANAGING EDITOR**

Alex Ruiz

### **EDITOR**

Jane Bowar Zastrow

### **TECHNICAL EDITORS**

Robert S. Thesman, CPA

James R. Kroger, CPA

Owen P. Gray, CPA

Thomas Boccia, CPA

Daniel J. Smith, CPA

### **STAFF WRITERS**

Jennifer Dockery

Jennifer Hill

### **CONTRIBUTING WRITERS**

Daniel A. Crouse

Brandi Day

Brad Elphick, CPA

Owen P. Gray, CPA

Jim Kroger, CPA

John Leith-Tetrault

Forrest David Milder

Thomas D. Morton

Charlie Rhuda, CPA

Buzz Roberts

Amanda Talbot

Stephen B. Tracy, CPA

### **PRODUCTION**

Jesse Barredo

James Matuszak

## **Novogradac Journal of Tax Credits Information**

Address all correspondence and editorial submissions to:  
Alex Ruiz / 415.356.8088

Address inquiries regarding advertising opportunities to:  
Emil Bagalso / 415.356.8037

Editorial material in this publication is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding the low-income housing tax credit or any other material covered in this publication can only be obtained from your tax advisor.



**NOVOGRADAC  
& COMPANY** LLP

CERTIFIED PUBLIC ACCOUNTANTS

© Novogradac & Company LLP  
2010 All rights reserved.  
ISSN 2152-646X

Reproduction of this publication in whole or in part in any form without written permission from the publisher is prohibited by law.

## Novogradac Journal of Tax Credits Advisory Board

### LOW-INCOME HOUSING TAX CREDITS

Bud Clarke	BOSTON FINANCIAL INVESTMENT MANAGEMENT
Jana Cohen Barbe	SONNENSCHN NATH & ROSENTHAL LLP
Tom Dixon	BOSTON CAPITAL
Valerie White	STANDARD & POOR'S CORPORATION
Rick Edson	HOUSING CAPITAL ADVISORS INC.
Richard Gerwitz	CITI COMMUNITY CAPITAL
Rochelle Lento	DYKEMA GOSSETT PLLC
John Lisella	U.S. BANCORP COMMUNITY DEV. CORP.
Phillip Melton	GRANDBRIDGE REAL ESTATE CAPITAL
Thomas Morton	PILLSBURY WINTHROP SHAW PITTMAN LLP
Stephen Ryan	COX, CASTLE & NICHOLSON LLP
Arnold Schuster	SONNENSCHN NATH & ROSENTHAL LLP
Rob Wasserman	U.S. BANCORP COMMUNITY DEV. CORP.

### PROPERTY COMPLIANCE

Rose Guerrero	CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Sharon Jackman	SIG SERVICES LLC
Michael Kotin	KAY KAY REALTY
Patricia Murphy	TEXAS DEPT. OF HOUSING & COMM. AFFAIRS
Mardi Roberts	WASHINGTON STATE HOUSING FINANCE COMMISSION
Michael Snowdon	MCA HOUSING PARTNERS
Gianna Solari	SOLARI ENTERPRISES
Ruth Theobald Probst	THEOPRO COMPLIANCE & CONSULT. INC.
Kimberly Taylor	HOUSING DEVELOPMENT CENTER

### HOUSING AND URBAN DEVELOPMENT

Sheldon Schreiber	PEPPER HAMILTON LLP
Monica Sussman	NIXON PEABODY LLP

### NEW MARKETS TAX CREDITS

Frank Altman	COMMUNITY REINVESTMENT FUND
Bruce Bonjour	PERKINS COIE LLC
Neil Kimmelfield	LANE POWELL
Scott Lindquist	SONNENSCHN NATH & ROSENTHAL LLP
Ruth Sparrow	FUTURES UNLIMITED LAW PC
Herb Stevens	NIXON PEABODY LLP
Mary Tingerthal	HOUSING PARTNERSHIP NETWORK
Tom Tracy	HUNTER CHASE & COMPANY
Joseph Wesolowski	ENTERPRISE COMMUNITY INVESTMENT INC.

### HISTORIC TAX CREDITS

Don Holm	FARRIS BOBANGO BRANAN PLC
John Leith-Tetrault	NATIONAL TRUST COMM. INVESTMENT CORP.
Bill MacRostie	MACROSTIE HISTORIC ADVISORS LLC
Donna Rodney	BRYAN CAVE LLP
John Tess	HERITAGE CONSULTING GROUP

### RENEWABLE ENERGY TAX CREDITS

Ed Feo	MILBANK, TWEED, HADLEY & MCCLOY LLP
Michael Hall	BORREGO SOLAR SYSTEMS
Jim Howard	DUDLEY VENTURES

continued from page 2

Supporters of the NMTC say that the program's track record will serve it well regardless of any specific races or a general power shift. "The credit has had a long history of bipartisan support," said Robert Rapoza, president of Rapoza Associates, which manages the New Markets Tax Credit Coalition. "Regardless of who's in charge of Congress, the success of the program ought to put us in a good position to continue."

Rapoza predicted that Republicans will likely advance a new tax bill, which could serve as a vehicle for NMTC provisions. Overall, he said, most of the members of Congress who support the credit are in good shape going in to the elections. "We think we've got a brand people like regardless of what party they are with and we hope that will continue," Rapoza said.

Looking forward to 2011, the NMTC Coalition's goals include working with the House and Senate to secure an extension of the NMTC program. Alison Feighan, who is a vice president at Rapoza Associates and represents the NMTC Coalition, said she can see no reason that the Administration wouldn't support an extension of the program next year. However, Rapoza noted that the difficulties this year, which had nothing to do with the tax credit itself, point more than ever to a need to get a five year reauthorization bill for the NMTC.

### Historic Tax Credits

Michael Hanson, of the C2 Group, the lobbyist for the Historic Tax Credit Coalition (HTCC), was similarly confident that the strength of the historic tax credit program and its track record will insulate it from any significant impact from the elections.

"I don't believe that the elections will affect the support of the credit," Hanson said. Some key races involving lawmakers that have demonstrated support for the historic tax credit include Reps. Allyn Schwartz of Pennsylvania, and Pat Tiberi of Ohio, as well as Sen. Lincoln. But overall, the coalition's priority is for strong bipartisan support for the HTC program to continue.

### Renewable Energy Tax Credits

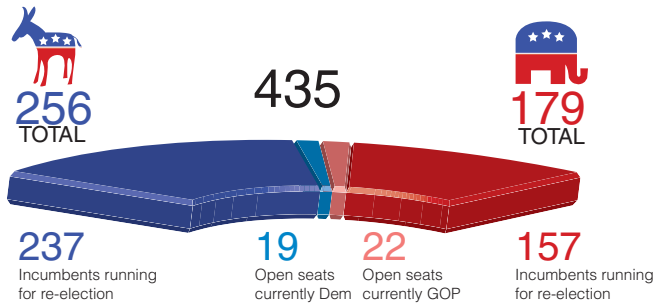
It's unlikely that renewable energy tax credits will suffer significant negative impact from the elections because widespread bipartisan support exists for renewable energy. Moreover, there is no shortage of legislation—dozens of bills have been introduced this year to extend or expand energy tax credits.

At the time of this writing, Ways and Means Committee Chairman Rep. Sander Levin, D-Mich., was circulating draft legislative text of the Domestic Manufacturing and Energy Jobs Act of 2010. The bill would extend and expand the Section 48C advanced manufacturing tax credit and extend the Section 1603 cash grant in lieu of

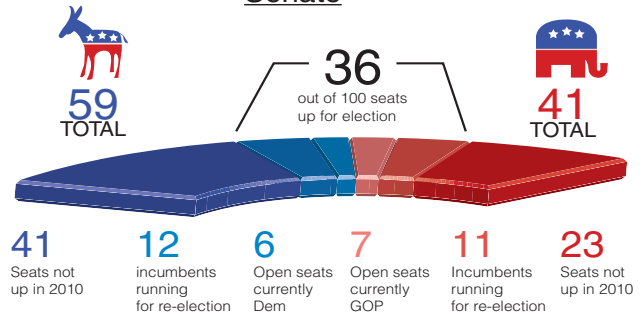
continued on page 4

continued from page 3

### House of Representatives



### Senate



tax credit program through 2012. However, the sticking point on these kinds of bills is finding acceptable offsets for any new spending; this has been very difficult this year and will likely remain so next year.

“It’s vital for the renewable energy community to continue to communicate the value of these programs to lawmakers,” said Stephen Tracy, CPA, a partner at Novogradac & Company. “Those efforts will be key in securing the support the renewable energy industry needs to continue growing.”

elections for tax credit programs, the recurring theme is clear: tax credits with proven results—such as the LIHTC, NMTC and HTC—stand to lose little immediate support, largely because of their track records. And while this is an encouraging consensus, efforts to remain in this legislative position must be ongoing lest the tax credit community lose ground. Tax credit supporters must continue to educate lawmakers, both incumbent and incoming, on the positive results that these programs create in order to continue the trend of bipartisan support in the years to come. ♦

#### Educate, Inform, Advocate

When considering the potential impact of the mid-term

*This article first appeared in the August 2010 issue of the Novogradac Journal of Tax Credits.*

© Novogradac & Company LLP 2010 - All Rights Reserved

*Notice pursuant to IRS regulations: Any U.S. federal tax advice contained in this article is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties under the Internal Revenue Code; nor is any such advice intended to be used to support the promotion or marketing of a transaction. Any advice expressed in this article is limited to the federal tax issues addressed in it. Additional issues may exist outside the limited scope of any advice provided – any such advice does not consider or provide a conclusion with respect to any additional issues. Taxpayers contemplating undertaking a transaction should seek advice based on their particular circumstances.*

*This editorial material is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding property compliance or any other material covered in this article can only be obtained from your tax advisor. For further information visit [www.novoco.com](http://www.novoco.com).*

*Special offer for E-newsletter only subscribers:*

*Click here for 20% off an introductory  
12-Month Print Subscription to the Journal of Tax Credits.*