The Final Report of the Georgia House Study Committee on Low-Income Housing Tax Credits

<u>Committee Members</u>

Representative Dale Rutledge, Chairman

Representative Johnnie Caldwell

Representative Demetrius Douglas

Representative Spencer Frye

Representative Trey Kelley

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Introduction

HR 798, adopted during the 2017 legislative session, established the House Study Committee on Low-Income Housing Tax Credits. The committee was chaired by Representative Dale Rutledge. Other members of the committee included Representative Johnnie Caldwell, Representative Demetrius Douglas, Representative Spencer Frye, and Representative Trey Kelley. HR 798 tasked the committee with determining the effectiveness of the low-income housing tax credit program as well as any problems, issues, or additional needs related to the program.

The federal low-income housing tax credit was established in 1986. Each state receives federal credits based on population. When the program was established, each state received an allocation of $1.50 per person. In 2001, the federal credit was tied to inflation and Georgia implemented a state income tax credit that matches the federal credit dollar for dollar. As of 2016, the federal credits were allocated at a rate of $2.35 per person. Based on Georgia's population, the state received $23,494,178 in federal competitive credits and matched that amount in the state tax credits. Since credits are claimed over a period of ten years, the cumulative allocation of Georgia's state low-income housing tax credit program and the federal low-income housing tax credit program in 2016 was $466,163,812 with $233,081,906 attributed to the state credit.

Both the federal low-income housing tax credit and the Georgia low-income housing tax credit are administered by the Georgia Department of Community Affairs (DCA). Properties utilizing the low-income housing tax credits must house tenants whose annual income is not greater than 60% of the area median income as published by the U.S. Department of Housing and Urban Development. Property management must verify tenant income on an annual basis. The U.S. Department of Housing and Urban Development also annually publishes the maximum rent limits for each area.

The properties claiming the credits must remain in compliance with program regulations for 30 years. Although the tax credits may be claimed for 10 years, should the property fall out of compliance the department has the ability to recapture credits for the first 15 years the property is in use. During the following 15 year period the department is able to enforce its rent requirements through a restrictive covenant that has been placed on the land.

Hearings

The House Study Committee on Low-Income Housing Tax Credits met three times. The first meeting was held on Wednesday, October 11, 2017 in room 606 of the CLOB. During this meeting, the Georgia Department of Community Affairs presented the details of the low-income housing tax credits and answered questions from the committee members. The committee heard testimony from the following:

- Christopher Nunn, Commissioner
  - Commissioner Nunn introduced the committee to the team that administers the low-income housing tax credit program.
- Carmen Chubb, Deputy Commissioner, Housing

- Ms. Chubb provided the committee with an overview of the low-income housing tax credit program which included examples of who the program serves as well as how the program has had an impact in Georgia.
- Phillip Gilman, Director, Office of Housing Finance
  - Mr. Gilman explained how the low-income housing tax credit program functions in Georgia and why it has been successful. He also provided information regarding the demographics of the tenants, the number of housing units produced by the credit, and the number of families living in those units.
- Laurel Hart, Director, Housing Finance and Development Division
  - Ms. Hart defined the indirect benefits the low-income housing developments have on their communities and how the flexibility of the program allows for developments to be tailored to meet the specific needs of a community.

The second meeting was held on Tuesday, November 7, 2017 in room 406 of the CLOB. During this meeting the committee heard testimony from the following:

- Lynne Riley, Commissioner, Georgia Department of Revenue
  - Commissioner Riley described the paperwork and process behind the Department of Revenue validating the low-income housing tax credits that the Department of Community Affairs awards.
- Jet Toney, Principal, Cornerstone Communications Group, Representing the Georgia Affordable Housing Coalition
  - Mr. Toney provided historical background on the adoption of the Georgia low-income housing tax credit program including other options which were considered in at the time of passage.
- Dave Loeffel, Principal of Affordable Housing Investments, Walton Communities
  - Mr. Loeffel discussed the low-income housing development process, how it varies from the market rate housing development process, and the risks associated with developing low-income housing from the perspective of a for-profit business.
- Keitt King, Senior Vice President, Equity Team Leader, Suntrust Community Capital
  - Mr. King discussed the low-income housing investment process, the appeal of these investments, and how Georgia developments compare to low-income housing developments in other Southern states.
- Rick Searles, Executive Director, and Philip Searles, President, Beverly J. Searles Foundation
  - The witnesses described their experiences as a non-profit organization working with the low-income housing tax credit program on senior developments.
- Public Comment
  - No comments.

The third meeting was held on Monday, November 20, 2017. The committee toured the Farmington Hills development in Winder, GA and the Columbia Brookside development in Athens, GA. The tour of Farmington Hills was led by Kevin Buckner, President, and Brad Smith, Senior Vice President, of TBG

Residential. The tour of Columbia Brookside was led by Yolanda Johnson, Regional Manager, Columbia Residential. Following the tour of Columbia Brookside, the committee held a public meeting where they discussed what they had seen on the tours and asked questions to those in attendance. Those in attendance included:

- Nancy Denson, Mayor of Athens
- Rick Parker, Executive Director, Athens Housing Authority
- Adam Oates, President, SunTrust Community Capital
- Yolanda Johnson, Regional Manager, Columbia Residential
- Christopher Nunn, Commissioner, Department of Community Affairs
- Seth Coker, Director of Government and External Relations, Department of Community Affairs
- Philip Gilman, Director, Office of Housing Finance, Department of Community Affairs
- Marshall Aiken, Construction Management Program Specialist, Department of Community Affairs

Findings

After hearing from various stakeholders, the common message received was that the program is succeeding at its goal of providing a source of affordable housing and that the Department of Community Affairs is successfully administering and guiding the program. However, during the course of the hearings there were also some concerns raised.

The treatment of the fair market value of low-income housing tax credit properties for the purpose of ad valorem taxation is a source of disagreement between the state and some local governments. The state views the credits as a financing tool for developers because the credits generally go to an investor in the project rather than being used as income to property owners for annual operating costs associated with housing. For this reason, the General Assembly has determined in statute that the value of the credits should not be included when valuing the property for ad valorem taxation purposes. However, some local tax assessors consider the tax credits as income to the property and continue to include the value of the credits when determining the fair market value.

- During the 2002 session, the General Assembly passed HR 1073 which amended the Georgia Constitution to create a separate class of property for low-income tax credit properties. However, the amendment failed at the polls. Despite the failed constitutional amendment, the statute was still in place which specified that credits are not to be included in the fair market value of the low-income tax credit properties. The Department of Revenue provided guidance to county tax assessors informing them that they are not to include the credits; however, many assessors chose to include the value of the credits anyway.
- In 2014, HB 954 was passed which specifically stated that rent limitations must be factored into the assessment of property that is qualified for the low-income housing tax credit. The law was quickly challenged. In September of 2016, the Georgia Supreme Court ruled that the law is unconstitutional because not factoring tax credits when determining the fair market value of a

low-income tax credit property violates the taxation uniformity provision of the Georgia constitution.

- The most recent effort to codify the legislature's intent was HB 196 in 2017. HB 196 stated that low-income housing tax credit properties may only be compared to other low-income housing tax credit properties for the purpose of determining fair market value. Further, when using the income approach to valuing property, any credits that are attributable to the property may only be considered if those credits generate actual income to the owner. This law was quickly challenged and the case is currently working through the judicial system.

The study committee recognizes and supports continued efforts by the General Assembly to ensure that the value of the low-income housing tax credits is not included in the fair market value of the property.

During the hearings, questions were raised regarding what other states do to provide affordable housing options. According to the Department of Community Affairs, there are 15 states that utilize a state tax credit to incentivize affordable housing construction, and of those 15, seven (including Georgia), provide a dollar for dollar match to the federal tax credit. Other states use appropriated funds and low-interest loan programs to incentivize the building of affordable housing. During the committee's second hearing, Keitt King of SunTrust Community Capital spoke to his experiences working on low-income housing projects in other states and praised the tax credit system in Georgia saying that the Georgia and federal tax credits along with the oversight and direction from the Department of Community Affairs has led to higher quality properties being built in Georgia.

During the committee's second hearing, Rick Searles of the Beverly J. Searles Foundation spoke to the importance of affordable housing for seniors. Many senior citizens are living on low, fixed incomes and cannot afford market-based rents in their areas. The number of senior citizens will increase significantly as the baby boomer generation ages. The needs and desires of seniors vary from those of young families and there needs to be affordable housing available for them. Having housing developments dedicated to seniors allows for their specific needs and desires to be met and allows for seniors to be able to age in place rather than prematurely moving into a nursing home or assisted living facility.

The value of a mixed income housing development was seen first-hand by the committee during the tour of Columbia Brookside in Athens. The units in that development are one-third market rate, one-third low-income housing, and one-third public housing. Each unit is designated as either market rate, low-income housing, or public housing but they are randomly distributed throughout the development and are all identical so there is no way of knowing which residents are in which category. This diversity is bringing together residents with incomes typically up to 125 percent of area median income. The failed public housing projects of the past have shown that segregating low-income earners does not provide adequate opportunities to break the cycle of poverty.

Committee Recommendations

After a comprehensive review of the Georgia low-income housing tax credit, the committee came to the following recommendations:

- The committee encourages DCA to prioritize mixed income working class family developments. The success seen at Columbia Brookside should be replicated in other areas throughout the state that are facing similar issues. Income diversity among residents is important and the committee wants to see DCA award additional points to developments willing to take the additional risk that comes when renting a portion of the units at the market rate.

- The committee recommends that DCA award additional points during the application phase for developments that incorporate job training classes or job counseling services and for providing a community computer workstation. Encouraging and enabling residents to improve their job skills will allow residents to move on to higher income careers and move out of low-income housing and into market-based rentals or their own home.

- The committee encourages DCA to promote more development of senior properties. The youngest baby boomers turned 53 in 2017. Soon the entire generation will reach retirement age at which point many will become fixed income earners and see their annual incomes decline. It is important for the state to plan ahead to ensure quality affordable housing is available when this large generation reaches retirement age.

- Finally, while largely acknowledged as a successful program, the state tax credit has not been subject to a sunset or major review since its inception in 2001. Given the significant investment the state has made, the committee believes it is appropriate for a sunset to be placed on the program. This will allow for a routine and thorough review of the program to take place. The committee recommends that the low-income housing tax credit sunset on December 31, 2020 and, should it be extended, continue to be subject to a review and sunset every five years. The sunset provision will honor and continue to fund the tax credits which have been approved, provided that the developments remain in compliance with the program’s regulations, but will end the selection process for future tax credits.

Respectfully Submitted,

Dale Rutledge

Chairman