

2023 Regular Session

HOUSE BILL NO. 452

BY REPRESENTATIVE BOURRIAQUE

TAX CREDITS: Establishes a tax credit for the development of certain affordable housing projects

1 AN ACT

2 To enact R.S. 47:6043, relative to tax credits; to authorize nonrefundable credits against
3 income tax, corporate franchise tax, and insurance premium tax for qualified housing
4 projects; to provide an application process for the tax credits; to provide for awarding
5 of the credits by the Louisiana Housing Corporation; to provide for agreements with
6 respect to the credits; to authorize fees for applications for the credits; to provide for
7 duties of the Department of Revenue and the Department of Insurance with respect
8 to the credits; to authorize carrying forward of the credits; to provide for
9 transferability of the credits; to authorize fees in connection with transfers of credits;
10 to prohibit awarding of credits after a certain date; to require promulgation of
11 administrative rules; to provide for applicability; to provide for effectiveness; and to
12 provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 47:6043 is hereby enacted to read as follows:

15 §6043. Tax credit; workforce housing

16 A.(1) There shall be allowed a nonrefundable credit against income tax,
17 corporation franchise tax, and insurance premium tax liability which shall be claimed
18 beginning with the taxable year in which a qualified project, as defined in Paragraph
19 (2) of this Subsection, is placed in service. The amount of the credit shall be equal
20 to the aggregate federal credit initially determined pursuant to 26 U.S.C.

1 42(b)(1)(B)(ii) and shall be taken in equal installments each year over a period of six
2 years.

3 (2) As used in this Section, the following terms shall have the meanings
4 ascribed to them in this Paragraph:

5 (a) "Insurance premium tax" means any tax liability incurred by any entity
6 pursuant to the provisions of R.S. 22:831, 836, 838, or 842 except for any liability
7 incurred pursuant to R.S. 22:842(C).

8 (b) "Qualified project" means a housing project that qualifies for the federal
9 low-income housing credit provided for in 26 U.S.C. 42.

10 B.(1) In order to qualify for the credit provided for in this Section, the owner
11 of a qualified project shall submit an application to the executive director of the
12 Louisiana Housing Corporation on a form prescribed by the executive director. The
13 executive director shall award credits pursuant to this Section through the process
14 outlined in the Qualified Allocation Plan of the Louisiana Housing Corporation.
15 Prior to awarding credits to the owner of a qualified project, the executive director
16 shall enter into a written agreement with that party which encompasses all of the
17 following:

18 (a) A declaration of the amount of the award.

19 (b) A certification by the owner of a qualified project that the project
20 qualifies for the federal low-income housing credit pursuant to 26 U.S.C. 42.

21 (c) A term of no less than thirty consecutive taxable years or other period set
22 forth in the tax credit regulatory agreement.

23 (d) A requirement that the agreement be filed in the mortgage records of the
24 parish in which the qualifying project is located.

25 (e) A provision establishing that the agreement shall be deemed a contract
26 enforceable by tenants and third-party beneficiaries of the agreement.

27 (f) A requirement that the taxpayer notify the Louisiana Housing
28 Corporation, or its designee, if there is a determination by the Internal Revenue
29 Service that the project is not in compliance with 26 U.S.C. 42(g).

1 (2) After entering into an agreement with the taxpayer that meets the
2 requirements of Paragraph (1) of this Subsection, the executive director of the
3 Louisiana Housing Corporation shall submit written notification to the secretary of
4 the Department of Revenue and the commissioner of insurance, within thirty days
5 of the execution of the agreement, certifying the amount of tax credit awarded to the
6 taxpayer in accordance with this Section contingent upon the qualified project being
7 placed in service.

8 (3) The total amount of credits awarded by the Louisiana Housing
9 Corporation in accordance with this Section shall not exceed one hundred million
10 dollars in any calendar year.

11 (4)(a) The Louisiana Housing Corporation shall charge and collect a single
12 application fee per credit application. The corporation shall establish the amount of
13 the fee in rules promulgated in accordance with the Administrative Procedure Act.
14 Notwithstanding any provision of law to the contrary, the House Committee on
15 Ways and Means and the Senate Committee on Revenue and Fiscal Affairs shall
16 have oversight authority with respect to the rules required by this Paragraph.

17 (b) The rules required by this Paragraph shall provide for an equitable
18 distribution of application fee proceeds between the Louisiana Housing Corporation,
19 the Department of Revenue, and the Department of Insurance.

20 C.(1) If the amount of the credit granted to a taxpayer for a taxable year
21 exceeds the amount of the taxpayer's tax liability for that year, the excess credit
22 amount may be carried forward for a period not to exceed five years.

23 (2)(a) If an owner of a qualified project receiving an award of a credit is a
24 partnership, limited liability company, S corporation, or similar pass-through entity,
25 the owner may allocate the credit among its partners, shareholders, members, or
26 other constituent taxpayers in any manner agreed to by such persons and, in the case
27 of multiple tiers of pass-through entities, the credit may be so allocated through any
28 number of pass-through entities in any manner agreed by the owners of such entities,
29 none of which shall be considered a transfer.

1 (b)(i) With respect to credits against income tax, corporation franchise tax,
2 or both, the owner shall certify to the Department of Revenue the amount of credit
3 allocated to each constituent taxpayer or shall notify the department that it has
4 assigned the duty of certification to one such constituent taxpayer, which constituent
5 taxpayer shall provide to the department the certification required by this Item. Each
6 constituent taxpayer shall be allowed to claim such amount subject to any applicable
7 restrictions provided in this Section.

8 (ii) With respect to credits against insurance premium tax, the owner shall
9 certify to the Department of Insurance the amount of credit allocated to each
10 constituent taxpayer or shall notify the department that it has assigned the duty of
11 certification to one such constituent taxpayer, which constituent taxpayer shall
12 provide to the department the certification required by this Item. Each constituent
13 taxpayer shall be allowed to claim such amount subject to any applicable restrictions
14 provided in this Section.

15 (c)(i) Transferors and transferees of credits against income tax or corporation
16 franchise tax authorized by this Section shall submit to the Department of Revenue
17 a written notification of any transfer or sale of such tax credits within ten business
18 days after the transfer or sale of the credits. The notification shall be accompanied
19 by a tax credit transfer processing fee. The Department of Revenue shall establish
20 the amount of the fee in rules promulgated in accordance with the Administrative
21 Procedure Act.

22 (ii) Transferors and transferees of credits against insurance premium tax
23 authorized by this Section shall submit to the Department of Insurance a written
24 notification of any transfer or sale of such tax credits within ten business days after
25 the transfer or sale of the credits. The notification shall be accompanied by a tax
26 credit transfer processing fee. The Department of Insurance shall establish the
27 amount of the fee in rules promulgated in accordance with the Administrative
28 Procedure Act.

1 (iii) A "transfer", for purposes of the fee requirement provided in this
2 Subparagraph, means an assignment, disposition, transfer, or allocation of tax
3 credits. The notification required by Items (i) and (ii) of this Subparagraph shall
4 include the transferor's tax credit balance prior to transfer, the credit identification
5 number assigned by the Louisiana Housing Corporation, the remaining balance after
6 transfer, all federal and Louisiana tax identification numbers for both transferor and
7 transferee, the date of transfer, the amount transferred, and any other information
8 required by the Department of Revenue or the Department of Insurance. Failure to
9 comply with any notification requirement provided in this Subparagraph shall result
10 in the disallowance of the tax credit until the parties are in full compliance with the
11 requirement.

12 (3) A taxpayer who is awarded or allocated a tax credit authorized in this
13 Section may elect to transfer or sell their unused credits to one or more individuals
14 or entities. The taxpayer or any subsequent transferee may transfer or sell the tax
15 credits an unlimited number of times.

16 (4) A taxpayer who claims a tax credit authorized in this Section shall not
17 be required to pay any additional tax or any retaliatory tax levied by R.S. 22:836 as
18 a result of claiming the credit.

19 D. The Louisiana Housing Corporation shall not make any award of tax
20 credits authorized in this Section after December 31, 2029.

21 Section 2. The provisions of Section 1 of this Act shall apply to tax years beginning
22 on or after January 1, 2024.

23 Section 3. This Act shall become effective on July 1, 2023; if vetoed by the governor
24 and subsequently approved by the legislature, this Act shall become effective on July 1,
25 2023, or on the day following such approval by the legislature, whichever is later.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 452 Original

2023 Regular Session

Bourriaque

Abstract: Establishes a state tax credit for the development of certain housing projects that qualify for federal affordable housing tax credits.

Proposed law authorizes a nonrefundable credit against income and corporation franchise taxes administered by the Dept. of Revenue, and against insurance premium taxes administered by the Dept. of Insurance, for affordable housing projects which meet the definition of "qualified project" provided in proposed law.

Proposed law defines "qualified project" as a housing project that qualifies for the federal low-income housing tax credit provided for in federal law (Internal Revenue Code (26 U.S.C. 42)).

Proposed law provides that the tax credit authorized therein shall be claimed beginning with the taxable year in which a qualified project is placed in service. Provides that the amount of the credit shall be equal to the aggregate federal credit initially determined pursuant to federal law (26 U.S.C. 42(b)(1)(B)(ii)) and shall be taken in equal installments each year over a period of six years.

Proposed law provides that in order to qualify for the credit authorized therein, the owner of a qualified project shall submit an application to the La. Housing Corp. Requires the executive director of the La. Housing Corp. to award credits through the process outlined in the corporation's Qualified Allocation Plan.

Proposed law stipulates that before awarding to the owner of a qualified project any credits provided for in proposed law, the executive director of the La. Housing Corp. shall enter into a written agreement with the project owner which encompasses terms and conditions applicable to the credits prescribed by proposed law. Requires the executive director of the La. Housing Corp. to submit notifications to the secretary of the Dept. of Revenue and the commissioner of insurance, within 30 days of the execution of the agreement, certifying the amount of tax credit awarded to a project owner contingent upon the qualified project being placed in service.

Proposed law authorizes the La. Housing Corp. to charge a fee in connection with applications for the tax credits. Authorizes the corporation to establish the amount of the fee by rule and requires that proceeds from the fee be distributed equitably among the corporation, the Dept. of Revenue, and the Dept. of Insurance.

Proposed law limits the total amount of credits to be awarded by the La. Housing Corp. in accordance with proposed law to no more than \$100,000,000 in any calendar year.

Proposed law provides that if the amount of the credit granted to a taxpayer for a taxable year exceeds the amount of the taxpayer's tax liability for that year, the excess credit amount may be carried forward for a period not to exceed five years.

Proposed law provides for allocation of the credit among partners, shareholders, members, or other constituent taxpayers of partnerships, limited liability companies, S corporations, and similar pass-through entities.

Proposed law authorizes the sale and transfer of credits granted in accordance with proposed law.

Proposed law prohibits awarding of any tax credits authorized by proposed law after December 31, 2029.

Proposed law becomes effective July 1, 2023, and applies to tax years beginning on or after Jan. 1, 2024.

(Adds R.S. 47:6043)