

SENATE BILL NO. 448—COMMITTEE ON REVENUE  
AND ECONOMIC DEVELOPMENT

(ON BEHALF OF THE COMMITTEE TO STUDY  
ISSUES REGARDING AFFORDABLE HOUSING)

MARCH 25, 2019

Referred to Committee on Revenue and  
Economic Development

SUMMARY—Provides for transferable tax credits for affordable  
housing in this State. (BDR 32-381)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; providing for the issuance of  
transferable tax credits to a project for the acquisition,  
development, construction, improvement, expansion,  
reconstruction or rehabilitation of low-income housing;  
and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing federal law establishes a federal income tax credit in an amount equal  
2 to a certain percentage of the costs of constructing a low-income housing project.  
3 Under existing federal law, to be eligible for this credit, a project is required to  
4 meet certain criteria and be a residential rental project for which: (1) 20 percent or  
5 more of the residential units in the project are restricted in the amount of rent  
6 charged to occupants of the units and occupied by individuals whose income is 50  
7 percent or less of the median gross income for the area in which the project is  
8 located; or (2) 40 percent or more of the residential units in the project are restricted  
9 in the amount of rent charged to occupants of the unit and occupied by individuals  
10 whose income is 60 percent or less of the median gross income for the area in  
11 which the project is located. (26 U.S.C. § 42) Existing state law and regulations: (1)  
12 designate the Housing Division of the Department of Business and Industry as the  
13 state agency that allocates and distributes the federal low-income housing tax  
14 credit; (2) require the Housing Division to develop and publish a qualified  
15 allocation plan that sets forth the priorities of this State for the allocation of federal  
16 low-income housing tax credits and the criteria for selecting applicants to receive  
17 an allocation of federal low-income housing tax credits; and (3) require the  
18 Housing Division to allocate and distribute federal low-income housing tax credits



19 to applicants who comply with the qualified allocation plan and qualify to receive  
20 such credits in accordance with the plan. (NRS 319.145; NAC 319.951-319.998)

21 This bill authorizes the Housing Division of the Department of Business and  
22 Industry to issue transferable tax credits that are authorized to be taken against  
23 certain state taxes to the sponsor of a project for the acquisition, development,  
24 construction, improvement, expansion, reconstruction or rehabilitation of low-  
25 income housing, as defined by existing federal law. **Section 9** of this bill authorizes  
26 the sponsor of such a project to apply on behalf of the project for the issuance of  
27 transferable tax credits. **Section 9** further authorizes the Housing Division to  
28 approve such an application if the project sponsor complies with the requirements  
29 of the qualified allocation plan for the allocation and distribution of federal low-  
30 income housing tax credits and a declaration setting forth the applicable restrictions  
31 on the rent charged to occupy a unit in the project and other conditions for the  
32 issuance of transferable tax credits has been recorded in the office of the county  
33 recorder of the county in which the project is located. Under **section 9**, the  
34 transferable tax credits are awarded based on the amount of preference points  
35 awarded to a project pursuant to the qualified allocation plan and in accordance  
36 with the procedure set forth in the qualified allocation plan. The transferable tax  
37 credits authorized by **section 9** may be applied to: (1) the excise tax on banks and  
38 payroll taxes imposed by chapters 363A and 363B of NRS; (2) the gaming license  
39 fees imposed by the provisions of NRS 463.370; (3) the general tax on insurance  
40 premiums imposed by chapter 680B of NRS; or (4) any combination of such taxes  
41 and fees.

42 **Section 10** of this bill limits to \$10,000,000 the amount of transferable tax  
43 credits which the Housing Division is authorized to approve in each fiscal year and  
44 prohibits the Housing Division from approving applications and issuing  
45 transferable tax credits for any fiscal year beginning on or after July 1, 2023. Under  
46 **section 10**, if less than \$10,000,000 of transferable tax credits are approved in any  
47 fiscal year, the remaining amount of transferable tax credits carries forward to any  
48 fiscal year ending on or before June 30, 2023.

49 **Section 11** of this bill requires the project sponsor to repay any portion of  
50 transferable tax credits to which the project sponsor is not entitled if the Housing  
51 Division determines that the project sponsor becomes ineligible for the credits or is  
52 found to have violated a restriction or condition set forth in the declaration of  
53 restrictive covenants and conditions recorded for the project. **Section 12** of this bill  
54 requires the Housing Division to make and submit reports to the Legislature  
55 concerning transferable tax credits provided to a project pursuant to this bill.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 360 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 12, inclusive, of this  
3 act.

4 **Sec. 2.** *As used in sections 2 to 12, inclusive, of this act,*  
5 *unless the context otherwise requires, the words and terms defined*  
6 *in sections 3 to 8, inclusive, of this act have the meanings ascribed*  
7 *to them in those sections.*

8 **Sec. 3.** *“Declaration of restrictive covenants and conditions”*  
9 *means an agreement between the Division and a project sponsor*  
10 *that sets forth the applicable restrictions concerning rent for a*



1 *project and any other conditions upon which transferable tax*  
2 *credits are issued to the project sponsor by the Division pursuant*  
3 *to sections 2 to 12, inclusive, of this act.*

4 **Sec. 4.** *“Division” means the Housing Division of the*  
5 *Department of Business and Industry.*

6 **Sec. 5.** *“Federal low-income housing tax credit” means the*  
7 *credit or reduction in liability for federal income taxes that is*  
8 *awarded pursuant to 26 U.S.C. § 42.*

9 **Sec. 6.** *“Project” means a project for the acquisition,*  
10 *development, construction, improvement, expansion,*  
11 *reconstruction or rehabilitation of a qualified low-income housing*  
12 *project, as defined in 26 U.S.C. § 42(g), located in this State.*

13 **Sec. 7.** *“Project sponsor” means a person who acquires an*  
14 *ownership interest in a project and is designated by the*  
15 *participants in the project to apply for a certificate of eligibility for*  
16 *transferable tax credits pursuant to section 9 of this act.*

17 **Sec. 8.** *“Qualified allocation plan” means the plan*  
18 *established by the Division pursuant to NRS 319.145 for allocating*  
19 *federal low-income housing tax credits.*

20 **Sec. 9. 1.** *On behalf of a project, the project sponsor may*  
21 *apply to the Division for a certificate of eligibility for transferable*  
22 *tax credits which may be applied to:*

23 *(a) Any tax imposed by chapter 363A or 363B of NRS;*

24 *(b) The gaming license fees imposed by the provisions of*  
25 *NRS 463.370;*

26 *(c) Any tax imposed by chapter 680B of NRS; or*

27 *(d) Any combination of the fees and taxes described in*  
28 *paragraphs (a), (b) and (c).*

29 **2.** *To apply for a certificate of eligibility for transferable tax*  
30 *credits, the project sponsor must:*

31 *(a) Submit an application on a form prescribed by the*  
32 *Division; and*

33 *(b) Comply with the requirements to obtain an allocation of*  
34 *federal low-income housing tax credits which are set forth in the*  
35 *qualified allocation plan.*

36 **3.** *The Division shall:*

37 *(a) Review each application for a certificate of eligibility for*  
38 *transferable tax credits submitted pursuant to subsection 2 and*  
39 *any supporting documents to determine whether the requirements*  
40 *for eligibility for a reservation of transferable tax credits are met*  
41 *and the amount of preference points awarded to the project;*

42 *(b) Determine the amount of transferable tax credits for which*  
43 *the project may be eligible, which amount must equal the amount*  
44 *determined by the Division to be necessary to make the project*  
45 *financially feasible; and*



1 (c) Reserve the amount of transferable tax credits for which  
2 each project is determined to be eligible pursuant to paragraph (b)  
3 in the order of the amount of preference points awarded to each  
4 such project pursuant to paragraph (a) until a reservation is made  
5 for each project or the amount of transferable credits reserved for  
6 the fiscal year is \$10,000,000, whichever occurs first. If the  
7 amount of transferable tax credits reserved for the fiscal year  
8 reaches \$10,000,000 before each eligible project is reserved the  
9 full amount of transferable tax credits for which it is determined  
10 to be eligible pursuant to paragraph (b), the Division may take any  
11 action that the Division determines will ensure the maximum  
12 development of affordable housing in this State, including,  
13 without limitation, proportionally reducing the reservation of each  
14 project for which transferable tax credits are reserved or reserving  
15 for the last project to receive a reservation of transferable tax  
16 credits an amount of transferable tax credits that is less than the  
17 full amount of transferable tax credits for which the project was  
18 determined to be eligible pursuant to paragraph (b).

19 4. If the Division reserves transferable tax credits for a  
20 project pursuant to subsection 3, the Division shall provide written  
21 notice of the reservation which identifies the amount of the tax  
22 credits reserved for the project to:

- 23 (a) The project sponsor;
- 24 (b) The Department;
- 25 (c) The Nevada Gaming Control Board;
- 26 (d) The Office of Finance; and
- 27 (e) The Fiscal Analysis Division of the Legislative Counsel  
28 Bureau.

29 5. The Division:

30 (a) Shall terminate a reservation of transferable tax credits if  
31 the project for which the reservation is awarded is not closed  
32 within the period specified in paragraph (a) of subsection 6 unless,  
33 before the expiration of that period, the Division receives from the  
34 project sponsor a written request for an extension of not more  
35 than 45 days. The Division may grant only one extension pursuant  
36 to this paragraph and, if the project is not closed before the  
37 expiration of the extension period, the Division must terminate the  
38 reservation of transferable tax credits. A request for an extension  
39 submitted pursuant to this paragraph must be accompanied by  
40 proof satisfactory to the Division that:

41 (1) The requirements for financing the project have been  
42 substantially completed;

43 (2) The delay in closing was the result of circumstances  
44 that could not have been anticipated by and were outside the



1 control of the project sponsor at the time the application was  
2 submitted by the project sponsor; and

3 (3) The project will be closed not later than 45 days after  
4 the Division receives the request.

5 (b) May terminate a reservation of transferable tax credits if  
6 the Division determines that any event, circumstance or condition  
7 occurs for which a reservation of federal low-income housing tax  
8 credits may be terminated. If transferable tax credits are  
9 terminated pursuant to this paragraph, the Division may issue a  
10 reservation for the amount of transferable tax credits terminated  
11 to other projects eligible for transferable tax credits in the order of  
12 the amount of preference points awarded to each such project  
13 pursuant to paragraph (a) of subsection 3.

14 6. Except as otherwise provided in this section, to be issued  
15 transferable tax credits:

16 (a) Not later than 270 days after the Division provides written  
17 notice of the reservation of transferable tax credits pursuant to  
18 subsection 4, the project sponsor must demonstrate to the Division  
19 that the project has been closed by providing proof satisfactory to  
20 the Division that the project sponsor has:

21 (1) Purchased and holds title in fee simple to the project site  
22 in the name of the project sponsor.

23 (2) Entered into a written agreement with a contractor who  
24 is licensed in this State to begin construction.

25 (3) Obtained adequate financing for the construction of the  
26 project. The applicant must provide written commitments or  
27 contracts from third parties.

28 (4) Executed a written commitment for a loan for  
29 permanent financing for the construction of the project in an  
30 amount that ensures the financial feasibility of the project. The  
31 commitment may be subject to the condition that the construction  
32 is completed and the project is appraised for an amount sufficient  
33 to justify the loan in accordance with the requirements of the  
34 lender for credit. If the project is a rural development project that  
35 receives loans or grants from the United States Department of  
36 Agriculture, the applicant must provide a form approved by the  
37 Division that indicates that money has been obligated for the  
38 construction of the project before the expiration of the period. An  
39 advance of that money is not required before the expiration of the  
40 period.

41 (b) Upon completion of the project, the project sponsor must  
42 submit to the Division a final application for transferable tax  
43 credits on a form provided by the Division and such information  
44 as the Division deems necessary to determine whether the project  
45 qualifies for the issuance of transferable tax credits. Upon receipt



1 of a final application pursuant to this paragraph, the Division  
2 shall complete a review of the project and the project sponsor. If,  
3 after such review, the Division determines that the project  
4 complies with the requirements upon which transferable tax  
5 credits were reserved pursuant to this section and a declaration of  
6 restrictive covenants and conditions has been recorded in the  
7 office of the county recorder for the county in which the project is  
8 located:

9 (1) The Division shall determine the appropriate amount of  
10 transferable tax credits for the project, which amount may not  
11 exceed the amount of transferable tax credits reserved for the  
12 project pursuant to this section and notify the project sponsor that  
13 the transferable tax credits will be issued;

14 (2) Within 30 days after the receipt of the notice, the project  
15 sponsor shall make an irrevocable declaration of the amount of  
16 transferable tax credits that will be applied to each fee or tax set  
17 forth in subsection 1, thereby accounting for all of the credits  
18 which will be issued; and

19 (3) Upon receipt of the declaration described in  
20 subparagraph (2), issue transferable tax credits to the project  
21 sponsor in the amount approved by the Division. The project  
22 sponsor shall notify the Division upon transferring any  
23 transferable tax credits. The Division shall notify the Department  
24 of Taxation and the Nevada Gaming Control Board of all  
25 transferable tax credits issued, segregated by each fee or tax set  
26 forth in subsection 1.

27 7. The project sponsor may submit a request to the  
28 Administrator of the Division to protect from disclosure any  
29 information in the application which, under generally accepted  
30 business practices, would be considered a trade secret or other  
31 confidential proprietary information of the business. After  
32 consulting with the business, the Administrator of the Division  
33 shall determine whether to protect the information from  
34 disclosure. The decision of the Administrator of the Division is  
35 final and is not subject to judicial review. If the Administrator of  
36 the Division determines to protect the information from disclosure,  
37 the protected information:

- 38 (a) Is confidential proprietary information of the business;  
39 (b) Is not a public record;  
40 (c) Must be redacted by the Administrator of the Division from  
41 any copy of the application that is disclosed to the public; and  
42 (d) Must not be disclosed to any person who is not an officer  
43 or employee of the Division unless the lead participant consents to  
44 the disclosure.



1       8. *The Division may adopt any regulations necessary to carry*  
2 *out the provisions of sections 2 to 12, inclusive, of this act.*

3       9. *The Nevada Tax Commission and the Nevada Gaming*  
4 *Commission:*

5       (a) *Shall adopt regulations prescribing the manner in which*  
6 *transferable tax credits described in this section will be*  
7 *administered.*

8       (b) *May adopt any other regulations that are necessary to*  
9 *carry out the provisions of sections 2 to 12, inclusive, of this act.*

10      **Sec. 10.** 1. *Except as otherwise provided in this subsection,*  
11 *the Division shall not approve any application for transferable tax*  
12 *credits submitted pursuant to section 9 of this act if:*

13       (a) *Approval of the application would cause the total amount*  
14 *of transferable tax credits approved pursuant to section 9 of this*  
15 *act for each fiscal year to exceed \$10,000,000. Any portion of the*  
16 *\$10,000,000 per fiscal year for which transferable tax credits have*  
17 *not previously been approved may be carried forward and made*  
18 *available for approval during the next or any future fiscal year*  
19 *ending on or before June 30, 2023.*

20       (b) *The Division receives the application on or after July 1,*  
21 *2023.*

22       2. *The transferable tax credits issued to a project sponsor*  
23 *pursuant to section 9 of this act expire 4 years after the date on*  
24 *which the transferable tax credits are issued to the project*  
25 *sponsor.*

26      **Sec. 11.** 1. *A project sponsor that is found to have*  
27 *submitted any false statement or made any false representation in*  
28 *any document submitted for the purpose of obtaining transferable*  
29 *tax credits pursuant to sections 2 to 12, inclusive, of this act or*  
30 *that fails to comply with the requirements of the qualified*  
31 *allocation plan or the declaration of restrictive covenants and*  
32 *conditions shall repay to the Department or the Nevada Gaming*  
33 *Control Board, as applicable, any portion of the transferable tax*  
34 *credits to which the project sponsor is not entitled.*

35       2. *Transferable tax credits purchased in good faith are not*  
36 *subject to forfeiture or repayment by the transferee unless the*  
37 *transferee submitted fraudulent information in connection with*  
38 *the purchase.*

39      **Sec. 12.** *The Division shall, on or before October 1 of each*  
40 *year, prepare and submit to the Governor and to the Director of*  
41 *the Legislative Counsel Bureau for transmittal to the Legislature*  
42 *an annual report which includes, for the immediately preceding*  
43 *fiscal year:*



1     **1. The number of applications submitted for a certificate of**  
2 **eligibility for transferable tax credits pursuant to section 9 of this**  
3 **act;**

4     **2. The number of projects for which transferable tax credits**  
5 **were approved;**

6     **3. Each type of project for which transferable tax credits were**  
7 **approved;**

8     **4. The amount of transferable tax credits approved;**

9     **5. The amount of transferable tax credits used;**

10    **6. The amount of transferable tax credits transferred;**

11    **7. The amount of transferable tax credits taken against each**  
12 **allowable fee or tax, including the actual amount used and**  
13 **outstanding, in total and for each project; and**

14    **8. The number of units of affordable housing created because**  
15 **of the issuance of transferable tax credits pursuant to section 9 of**  
16 **this act. As used in this subsection, "unit of affordable housing"**  
17 **means a residential unit in a project that is a rent-restricted unit,**  
18 **as defined in 26 U.S.C. § 42(g)(2).**

19    **Sec. 13.** The provisions of subsection 1 of NRS 218D.380 do  
20 not apply to any provision of this act which adds or revises a  
21 requirement to submit a report to the Legislature.

22    **Sec. 14.** This act becomes effective:

23    1. On July 1, 2019, for the purpose of adopting regulations and  
24 performing any other administrative tasks that are necessary to carry  
25 out the provisions of this act and on January 1, 2020, for all other  
26 purposes.

27    2. Expires by limitation on January 1, 2030.

