



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5136/1
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2017 ASSEMBLY BILL 869

January 19, 2018 - Introduced by Representatives SUMMERFIELD, ALLEN, GOYKE, HORLACHER, KERKMAN, KOLSTE, NOVAK, PETRYK, QUINN, ROHRKASTE, SPIROS and SUBECK, cosponsored by Senators TESTIN, FEYEN, FITZGERALD, PETROWSKI, RINGHAND and WIRCH. Referred to Committee on Housing and Real Estate.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to amend* 76.67 (2); and *to create* 71.07 (8b), 71.10 (4) (cs), 71.28 (8b),
2 71.30 (3) (cs), 71.47 (8b), 71.49 (1) (cs), 76.639 and 234.45 of the statutes;
3 **relating to:** an income and franchise tax credit for the development of
4 low-income housing.

Analysis by the Legislative Reference Bureau

This bill creates a state tax credit program administered by the Wisconsin Housing and Economic Development Authority that is similar to a federal low-income housing tax credit program also administered by WHEDA. Under the state program, WHEDA may certify a person to claim a nonrefundable income and franchise tax credit if all of the following conditions are satisfied:

1. The person has an ownership interest in a qualified development. Under the bill, a “qualified development” is a low-income housing project for purposes of the federal low-income housing tax credit program, located in Wisconsin, and financed with tax-exempt bonds.

2. The tax credit is necessary for the financial feasibility of the qualified development.

3. The qualified development is the subject of a recorded restrictive covenant requiring that for at least 15 years, among other things, the development must be maintained and operated as a qualified development.

4. The tax credit certification is issued in accordance with a qualified allocation plan WHEDA is required to establish under the federal low-income housing tax credit program.

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Under the bill, WHEDA must give preference to qualified developments located in a city, village, or town of fewer than 150,000. The bill also caps at \$42,000,000 the total amount of tax credits WHEDA may issue under the state program in a calendar year. However, the bill raises that cap for each calendar year by an amount equal to the total amount of all unallocated state tax credits from previous calendar years and the total amount of all previously allocated state tax credits that have been revoked or cancelled or otherwise recovered by WHEDA.

The bill also requires that WHEDA submit an annual report to the legislature concerning the progress of the program.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.07 (8b) of the statutes is created to read:

2 71.07 **(8b)** LOW-INCOME HOUSING CREDIT. (a) *Definitions.* In this subsection:

3 1. "Allocation certificate" means a statement issued by the authority certifying
4 that a qualified development is eligible for a credit under this subsection and
5 specifying the amount of the credit that the owners of the qualified development may
6 claim.

7 2. "Authority" means the Wisconsin Housing and Economic Development
8 Authority.

9 3. "Claimant" means a person who has an ownership interest in a qualified
10 development and who files a claim under this subsection.

11 4. "Compliance period" means the 15-year period beginning with the first
12 taxable year of the credit period.

13 5. "Credit period" means the period of 6 taxable years beginning with the
14 taxable year in which a qualified development is placed in service. For purposes of
15 this subdivision, if a qualified development consists of more than one building, the

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1 qualified development is placed in service in the taxable year in which the last
2 building of the qualified development is placed in service.

3 6. “Qualified basis” means the qualified basis determined under section 42 (c)
4 (1) of the Internal Revenue Code.

5 7. “Qualified development” means a qualified low-income housing project
6 under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt
7 bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this
8 state.

9 (b) *Filing claims.* Subject to the limitations provided in this subsection and in
10 s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim
11 as a credit against the taxes imposed under s. 71.02, up to the amount of the tax, the
12 amount allocated to the claimant by the authority under s. 234.45 for each taxable
13 year within the credit period.

14 (c) *Limitations.* 1. No person may claim the credit under par. (b) unless the
15 claimant includes with the claimant’s return a copy of the allocation certificate
16 issued to the qualified development.

17 2. A partnership, limited liability company, or tax-option corporation may not
18 claim the credit under this subsection. The partners of a partnership, members of
19 a limited liability company, or shareholders in a tax-option corporation may claim
20 the credit under this subsection based on eligible costs incurred by the partnership,
21 limited liability company, or tax-option corporation. The partnership, limited
22 liability company, or tax-option corporation shall calculate the amount of the credit
23 that may be claimed by each partner, member, or shareholder and shall provide that
24 information to the partner, member, or shareholder. For shareholders of a tax-option
25 corporation, the credit may be allocated in proportion to the ownership interest of

ASSEMBLY BILL 869**SECTION 1**

1 each shareholder. Credits computed by a partnership or limited liability company
2 may be claimed in proportion to the ownership interests of the partners or members
3 or allocated to partners or members as provided in a written agreement among the
4 partners or members that is entered into no later than the last day of the taxable year
5 of the partnership or limited liability company, for which the credit is claimed. Any
6 partner or member who claims the credit as allocated by a written agreement shall
7 provide a copy of the agreement with the tax return on which the credit is claimed.
8 A person claiming the credit as provided under this subdivision is solely responsible
9 for any tax liability arising from a dispute with the department of revenue related
10 to claiming the credit.

11 (d) *Recapture.* 1. As of the last day of any taxable year during the compliance
12 period, if the amount of the qualified basis of a qualified development with respect
13 to a claimant is less than the amount of the qualified basis as of the last day of the
14 immediately preceding taxable year, the amount of the claimant's tax liability under
15 this subchapter shall be increased by the recapture amount determined by using the
16 method under section 42 (j) of the Internal Revenue Code.

17 2. In the event that the recapture of any credit is required in any taxable year,
18 the taxpayer shall include the recaptured proportion of the credit on the return
19 submitted for the taxable year in which the recapture event is identified.

20 (e) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
21 s. 71.28 (4), applies to the credit under this subsection.

22 **SECTION 2.** 71.10 (4) (cs) of the statutes is created to read:

23 71.10 (4) (cs) Low-income housing credit under s. 71.07 (8b).

24 **SECTION 3.** 71.28 (8b) of the statutes is created to read:

25 71.28 (8b) LOW-INCOME HOUSING CREDIT. (a) *Definitions.* In this subsection:

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1 1. “Allocation certificate” means a statement issued by the authority certifying
2 that a qualified development is eligible for a credit under this subsection and
3 specifying the amount of the credit that the owners of the qualified development may
4 claim.

5 2. “Authority” means the Wisconsin Housing and Economic Development
6 Authority.

7 3. “Claimant” means a person who has an ownership interest in a qualified
8 development and who files a claim under this subsection.

9 4. “Compliance period” means the 15-year period beginning with the first
10 taxable year of the credit period.

11 5. “Credit period” means the period of 6 taxable years beginning with the
12 taxable year in which a qualified development is placed in service. For purposes of
13 this subdivision, if a qualified development consists of more than one building, the
14 qualified development is placed in service in the taxable year in which the last
15 building of the qualified development is placed in service.

16 6. “Qualified basis” means the qualified basis determined under section 42 (c)
17 (1) of the Internal Revenue Code.

18 7. “Qualified development” means a qualified low-income housing project
19 under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt
20 bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this
21 state.

22 (b) *Filing claims.* Subject to the limitations provided in this subsection and in
23 s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim
24 as a credit against the taxes imposed under s. 71.23, up to the amount of the tax, the

ASSEMBLY BILL 869**SECTION 3**

1 amount allocated to the claimant by the authority under s. 234.45 for each taxable
2 year within the credit period.

3 (c) *Limitations.* 1. No person may claim the credit under par. (b) unless the
4 claimant includes with the claimant's return a copy of the allocation certificate
5 issued to the qualified development.

6 2. A partnership, limited liability company, or tax-option corporation may not
7 claim the credit under this subsection. The partners of a partnership, members of
8 a limited liability company, or shareholders in a tax-option corporation may claim
9 the credit under this subsection based on eligible costs incurred by the partnership,
10 limited liability company, or tax-option corporation. The partnership, limited
11 liability company, or tax-option corporation shall calculate the amount of the credit
12 that may be claimed by each partner, member, or shareholder and shall provide that
13 information to the partner, member, or shareholder. For shareholders of a tax-option
14 corporation, the credit may be allocated in proportion to the ownership interest of
15 each shareholder. Credits computed by a partnership or limited liability company
16 may be claimed in proportion to the ownership interests of the partners or members
17 or allocated to partners or members as provided in a written agreement among the
18 partners or members that is entered into no later than the last day of the taxable year
19 of the partnership or limited liability company, for which the credit is claimed. Any
20 partner or member who claims the credit as allocated by a written agreement shall
21 provide a copy of the agreement with the tax return on which the credit is claimed.
22 A person claiming the credit as provided under this subdivision is solely responsible
23 for any tax liability arising from a dispute with the department of revenue related
24 to claiming the credit.

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1 (d) *Recapture*. 1. As of the last day of any taxable year during the compliance
2 period, if the amount of the qualified basis of a qualified development with respect
3 to a claimant is less than the amount of the qualified basis as of the last day of the
4 immediately preceding taxable year, the amount of the claimant's tax liability under
5 this subchapter shall be increased by the recapture amount determined by using the
6 method under section 42 (j) of the Internal Revenue Code.

7 2. In the event that the recapture of any credit is required in any taxable year,
8 the taxpayer shall include the recaptured proportion of the credit on the return
9 submitted for the taxable year in which the recapture event is identified.

10 (e) *Administration*. Subsection (4) (e) to (h), as it applies to the credit under
11 sub. (4), applies to the credit under this subsection.

12 **SECTION 4.** 71.30 (3) (cs) of the statutes is created to read:

13 71.30 (3) (cs) Low-income housing credit under s. 71.28 (8b).

14 **SECTION 5.** 71.47 (8b) of the statutes is created to read:

15 71.47 (8b) LOW-INCOME HOUSING CREDIT. (a) *Definitions*. In this subsection:

16 1. "Allocation certificate" means a statement issued by the authority certifying
17 that a qualified development is eligible for a credit under this subsection and
18 specifying the amount of the credit that the owners of the qualified development may
19 claim.

20 2. "Authority" means the Wisconsin Housing and Economic Development
21 Authority.

22 3. "Claimant" means a person who has an ownership interest in a qualified
23 development and who files a claim under this subsection.

24 4. "Compliance period" means the 15-year period beginning with the first
25 taxable year of the credit period.

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1 5. “Credit period” means the period of 6 taxable years beginning with the
2 taxable year in which a qualified development is placed in service. For purposes of
3 this subdivision, if a qualified development consists of more than one building, the
4 qualified development is placed in service in the taxable year in which the last
5 building of the qualified development is placed in service.

6 6. “Qualified basis” means the qualified basis determined under section 42 (c)
7 (1) of the Internal Revenue Code.

8 7. “Qualified development” means a qualified low-income housing project
9 under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt
10 bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this
11 state.

12 (b) *Filing claims.* Subject to the limitations provided in this subsection and in
13 s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim
14 as a credit against the taxes imposed under s. 71.43, up to the amount of the tax, the
15 amount allocated to the claimant by the authority under s. 234.45 for each taxable
16 year within the credit period.

17 (c) *Limitations.* 1. No person may claim the credit under par. (b) unless the
18 claimant includes with the claimant’s return a copy of the allocation certificate
19 issued to the qualified development.

20 2. A partnership, limited liability company, or tax-option corporation may not
21 claim the credit under this subsection. The partners of a partnership, members of
22 a limited liability company, or shareholders in a tax-option corporation may claim
23 the credit under this subsection based on eligible costs incurred by the partnership,
24 limited liability company, or tax-option corporation. The partnership, limited
25 liability company, or tax-option corporation shall calculate the amount of the credit

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1 that may be claimed by each partner, member, or shareholder and shall provide that
2 information to the partner, member, or shareholder. For shareholders of a tax-option
3 corporation, the credit may be allocated in proportion to the ownership interest of
4 each shareholder. Credits computed by a partnership or limited liability company
5 may be claimed in proportion to the ownership interests of the partners or members
6 or allocated to partners or members as provided in a written agreement among the
7 partners or members that is entered into no later than the last day of the taxable year
8 of the partnership or limited liability company, for which the credit is claimed. Any
9 partner or member who claims the credit as allocated by a written agreement shall
10 provide a copy of the agreement with the tax return on which the credit is claimed.
11 A person claiming the credit as provided under this subdivision is solely responsible
12 for any tax liability arising from a dispute with the department of revenue related
13 to claiming the credit.

14 (d) *Recapture.* 1. As of the last day of any taxable year during the compliance
15 period, if the amount of the qualified basis of a qualified development with respect
16 to a claimant is less than the amount of the qualified basis as of the last day of the
17 immediately preceding taxable year, the amount of the claimant's tax liability under
18 this subchapter shall be increased by the recapture amount determined by using the
19 method under section 42 (j) of the Internal Revenue Code.

20 2. In the event that the recapture of any credit is required in any taxable year,
21 the taxpayer shall include the recaptured proportion of the credit on the return
22 submitted for the taxable year in which the recapture event is identified.

23 (e) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
24 s. 71.28 (4), applies to the credit under this subsection.

25 **SECTION 6.** 71.49 (1) (cs) of the statutes is created to read:

ASSEMBLY BILL 869**SECTION 6**

1 71.49 (1) (cs) Low-income housing credit under s. 71.47 (8b).

2 **SECTION 7.** 76.639 of the statutes is created to read:

3 **76.639 Low-income housing credit. (1) DEFINITIONS.** In this section:

4 (a) "Allocation certificate" means a statement issued by the authority certifying
5 that a qualified development is eligible for a credit under this subsection and
6 specifying the amount of the credit that the owners of the qualified development may
7 claim.

8 (b) "Authority" means the Wisconsin Housing and Economic Development
9 Authority.

10 (c) "Claimant" means an insurer who has an ownership interest in a qualified
11 development and who files a claim under this section.

12 (d) "Compliance period" means the 15-year period beginning with the first
13 taxable year of the credit period.

14 (e) "Credit period" means the period of 6 taxable years beginning with the
15 taxable year in which a qualified development is placed in service. For purposes of
16 this paragraph, if a qualified development consists of more than one building, the
17 qualified development is placed in service in the taxable year in which the last
18 building of the qualified development is placed in service.

19 (f) "Qualified basis" means the qualified basis determined under section 42 (c)
20 (1) of the Internal Revenue Code.

21 (g) "Qualified development" means a qualified low-income housing project
22 under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt
23 bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this
24 state.

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1 **(2) FILING CLAIMS.** Subject to the limitations provided in this section and in s.
2 234.45, for taxable years beginning after December 31, 2017, a claimant may claim
3 as a credit against the fees imposed under s. 76.60, 76.63, 76.65, 76.66, or 76.67 the
4 amount allocated to the claimant by the authority under s. 234.45 for each taxable
5 year within the credit period.

6 **(3) LIMITATIONS.** No insurer may claim the credit under sub. (2) unless the
7 claimant includes with the claimant's return a copy of the allocation certificate
8 issued to the qualified development.

9 **(4) RECAPTURE.** (a) As of the last day of any taxable year during the compliance
10 period, if the amount of the qualified basis of a qualified development with respect
11 to a claimant is less than the amount of the qualified basis as of the last day of the
12 immediately preceding taxable year, the amount of the claimant's tax liability under
13 s. 76.60, 76.63, 76.65, 76.66, or 76.67 shall be increased by the recapture amount
14 determined by using the method under section 42 (j) of the Internal Revenue Code.

15 (b) In the event that the recapture of any credit is required in any taxable year,
16 the taxpayer shall include the recaptured proportion of the credit on the return
17 submitted for the taxable year in which the recapture event is identified.

18 **(5) CARRY-FORWARD.** If the credit under sub. (2) is not entirely offset against the
19 fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance
20 may be carried forward and credited against those fees for the following 15 years to
21 the extent that it is not offset by those fees otherwise due in all the years between
22 the year in which the expense was made and the year in which the carry-forward
23 credit is claimed.

24 **SECTION 8.** 76.67 (2) of the statutes is amended to read:

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1 76.67 (2) If any domestic insurer is licensed to transact insurance business in
2 another state, this state may not require similar insurers domiciled in that other
3 state to pay taxes greater in the aggregate than the aggregate amount of taxes that
4 a domestic insurer is required to pay to that other state for the same year less the
5 credits under ss. 76.635, 76.636, 76.637, 76.638, and 76.655, except that the amount
6 imposed shall not be less than the total of the amounts due under ss. 76.65 (2) and
7 601.93 and, if the insurer is subject to s. 76.60, 0.375 percent of its gross premiums,
8 as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss.
9 76.635, 76.636, 76.637, 76.638, 76.639, and 76.655 against that total, and except that
10 the amount imposed shall not be less than the amount due under s. 601.93.

11 **SECTION 9.** 234.45 of the statutes is created to read:

12 **234.45 Low-income housing tax credits. (1) DEFINITIONS.** In this section:

13 (a) “Allocation certificate” means a statement issued by the authority certifying
14 that a qualified development is eligible for a state tax credit and specifying the
15 amount of the credit that the owners of the qualified development may claim.

16 (b) “Compliance period” means the 15-year period beginning with the first
17 taxable year of the credit period.

18 (c) “Credit period” means the period of 6 taxable years beginning with the
19 taxable year in which a qualified development is placed in service. For purposes of
20 this paragraph, if a qualified development consists of more than one building, the
21 qualified development is placed in service in the taxable year in which the last
22 building of the qualified development is placed in service.

23 (d) “Qualified allocation plan” means the qualified allocation plan adopted by
24 the authority pursuant to section 42 (m) of the Internal Revenue Code.

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1 (e) "Qualified development" means a qualified low-income housing project
2 under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt
3 bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this
4 state.

5 (f) "State tax credit" means a tax credit under s. 71.07 (8b), 71.28 (8b), 71.47
6 (8b), or 76.639.

7 **(2) ESTABLISHMENT OF PROGRAM.** The authority shall establish a program to
8 certify persons to claim state tax credits under this section.

9 **(3) CERTIFICATION.** The authority may certify a person to claim a state tax credit
10 in an amount determined by the authority by issuing the person an allocation
11 certificate for the qualified development that is eligible for the state tax credit. The
12 authority may issue an allocation certificate under this subsection only if all of the
13 following conditions are satisfied:

14 (a) The allocation certificate is issued to a person who has an ownership
15 interest in the qualified development.

16 (b) The state tax credit is necessary for the financial feasibility of the qualified
17 development.

18 (c) The qualified development is the subject of a recorded restrictive covenant
19 requiring that, for the compliance period or for a longer period agreed to by the
20 authority and the owner of the qualified development, the development shall be
21 maintained and operated as a qualified development and shall be in compliance with
22 Title VIII of the federal Civil Rights Act of 1968, as amended.

23 (d) The allocation certificate is issued in accordance with the authority's
24 qualified allocation plan.

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1 (4) ALLOCATION LIMITS. The aggregate amount of all state tax credits the
2 authority certifies persons to claim in allocation certificates issued under sub. (3) in
3 the same calendar year may not exceed \$42,000,000, plus the total amount of all
4 unallocated state tax credits from previous calendar years and plus the total amount
5 of all previously allocated state tax credits that have been revoked or cancelled or
6 otherwise recovered by the authority.

7 (5) PREFERENCE FOR SMALLER MUNICIPALITIES. In issuing allocation certificates
8 under sub. (3), the authority shall give preference to qualified developments located
9 in a city, village, or town with a population of fewer than 150,000.

10 (6) REPORT. No later than December 31 of each year, the authority shall submit
11 a report to the legislature under s. 13.172 (2) that includes all of the following:

12 (a) A statement of the number of qualified developments for which the
13 authority issued allocation certificates that year.

14 (b) A description of each qualified development for which the authority issued
15 an allocation certificate that year, including the geographic location of the
16 development, the household type and any specific demographic information
17 available concerning the residents intended to be served by the development, the
18 income levels of residents intended to be served by the development, and the rents
19 or set-asides authorized for each development.

20 (c) An analysis of housing market and demographic information that shows
21 how the qualified developments for which the authority has issued allocation
22 certificates at any time are addressing the need for affordable housing within the
23 communities those developments are intended to serve and an analysis of any
24 remaining disparities in the affordability of housing within those communities.

