

South Carolina General Assembly
124th Session, 2021-2022

Bill 3130

~~Indicates Matter Stricken~~

Indicates New Matter

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "SOUTH CAROLINA OPPORTUNITY ZONE ENHANCEMENT ACT OF 2021" BY ADDING SECTION 12-6-3805 SO AS TO PROVIDE AN INCOME TAX CREDIT TO TAXPAYERS INVESTING IN NEW PROJECTS LOCATED IN AN OPPORTUNITY ZONE IN THIS STATE; BY ADDING SECTION 12-6-3810, AS AMENDED, SO AS TO ALLOW A TAXPAYER ELIGIBLE FOR A FEDERAL LOW-INCOME HOUSING TAX CREDIT TO CLAIM A LOW-INCOME STATE TAX CREDIT, IF THE PROPERTY IS LOCATED IN DESIGNATED OPPORTUNITY ZONES IN THIS STATE; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE JOBS TAX CREDIT, SO AS TO PROVIDE FOR AN ADDITIONAL CREDIT FOR FULL-TIME JOBS CREATED IN TIER III AND TIER IV COUNTIES WITHIN DESIGNATED OPPORTUNITY ZONES; BY ADDING ARTICLE 27 TO CHAPTER 36, TITLE 12 SO AS TO PROVIDE FOR A SALES TAX REBATE AND CREDIT TO A GROCERY STORE VENDOR WHICH LOCATES A STORE IN AN OPPORTUNITY ZONE IN AN AREA WHICH IS DEFINED AS A "FOOD DESERT"; BY ADDING SECTION 13-1-35 SO AS TO PROVIDE THAT THE DEPARTMENT OF COMMERCE SHALL ESTABLISH A GRANT PROGRAM TO PROVIDE NONRECURRING AID TO TAXPAYERS INVESTING IN NEW PROJECTS IN A DESIGNATED OPPORTUNITY ZONE IN TIER III OR TIER IV COUNTIES ON A PRIORITY BASIS; AND BY ADDING SECTION 13-1-47 SO AS TO ESTABLISH WITHIN THE DEPARTMENT OF COMMERCE A SOUTH CAROLINA OPPORTUNITY ZONE LEADERSHIP TASK FORCE AND TO PROVIDE FOR ITS DUTIES AND FUNCTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (A) The General Assembly finds:

(1) Under federal law, an Opportunity Zone means an area that has been designated as a qualified Opportunity Zone in the State under Section 1400Z-1 of the Internal Revenue Code.

(2) Opportunity Zones are federally designated areas of the country that have populations that are twenty percent or more under the poverty line. These are areas that have not received any appreciable financial assistance to stimulate economic growth for an extended period of time.

(3) Up to twenty-five percent of low income neighborhoods that meet the income qualifications of the program and up to five percent on non-low income tracts that meet other income and geographic requirements in each state, district, or territory can be designated as Opportunity Zones.

(4) The Opportunity Zone program was created to stimulate private investment in Opportunity Zone communities in exchange for capital gain tax incentives.

(5) Opportunity Zones do not operate through a tax credit program. Instead, Opportunity Zone designation and investment are governed through two Internal Revenue Code sections, making them more the product of an entirely new IRS rule that changes the tax treatment of capital gains, rather than the subject of a more traditionally structured tax credit program.

(6) South Carolina has one hundred thirty-five designated opportunity zones, including one hundred twenty-eight low income communities, plus seven non-low income contiguous tracts. Many of these areas are composed of a population, the majority of which are minority or economically disadvantaged citizens, and even more have citizens who are age twenty-five years or more, with a high school degree or less.

(B) The General Assembly declares that the purpose of this act is to provide additional state tax incentives beyond the federal incentives to encourage investments in designated Opportunity Zones. By doing this, the following specific purposes may be accomplished:

(1) help develop, redevelop, or expand small business, manufacturing, and housing;

(2) stimulate investment by the private sector;

(3) assist and recruit revitalization projects for small business, manufacturing, and housing; and

(4) stimulate political subdivisions to participate in developing and expanding small business, manufacturing, and other investments, including housing.

(C) This act is known and may be cited as the "South Carolina Opportunity Zone Enhancement Act of 2021".

SECTION 2. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3805. (A) A taxpayer investing in a designated federal opportunity zone in South Carolina is allowed a credit against any tax due pursuant to this title equal to twenty-five percent of the total investment costs, not to exceed fifty thousand dollars. The taxpayer shall provide a community-benefits agreement as prescribed by federal law with the area in which it is investing in order to qualify for the tax credit. A taxpayer only may claim the credit for investments made during the tax year. If the amount of the credit exceeds the taxpayer's income tax liability for that taxable year, the taxpayer may carry forward the excess for up to five years. The taxpayer shall claim the credit allowed by this section on the taxpayer's income tax return in a manner prescribed by the department. The department may require any documentation it considers necessary to implement the provisions of this section.

(B) The provisions of this section do not apply to supplemental job tax credits provided by Section 12-6-3360(C)(3) and state tax credits provided by Section 12-6-3810. A taxpayer qualifying for tax credits under Sections 12-6-3360(C)(3) and 12-6-3810, qualify for the full amount of these tax credits without limitation, but may not claim tax credits authorized by this section."

SECTION 3. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3810. (A) As used in this section:

(1) 'Eligibility statement' means a statement authorized and issued by the South Carolina Housing and Finance Development Authority certifying that a given project qualifies for the South Carolina housing tax credit. The authority shall establish guidelines and criteria upon which the eligibility statements are issued, which must include consideration of evidence of local support for the project. To receive the credits provided by this section, the project also must be located in a designated federal opportunity zone. The eligibility statement must specify the amount of the South Carolina housing tax credit allowed.

(2) 'Federal housing tax credit' means the federal tax credit as provided in Section 42 of the Internal Revenue Code of 1986, as amended.

(3) 'Median income' means those incomes that are determined by the federal Department of Housing and Urban Development guidelines and adjusted for family size.

(4) 'Project' means a housing project that has restricted rents that do not exceed thirty percent of median income for at least forty percent of its units occupied by persons or families having incomes of sixty percent or less of the median income, or at least twenty percent of the units occupied by persons or families having incomes of fifty percent or less of the median income.

(5) 'Qualified project' means a qualified low-income building as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended, that is located in South Carolina and receives approval for tax credits from the South Carolina Housing and Finance Development Authority provided pursuant to this section.

(6) 'Taxpayer' means a sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity that is subject to South Carolina taxes pursuant to Section 12-6-510, Section 12-6-530, Chapter 11, Title 12, or Chapter 7, Title 38.

(7) The project or qualified project also must be located in a designated federal opportunity zone. 'Opportunity Zone' has the same meaning as stated in Section 1400Z-1 of the Internal Revenue Code.

(B)(1) A state tax credit pursuant to this section may be claimed against income taxes imposed by Section 12-6-510 or 12-6-530, bank taxes imposed pursuant to Chapter 11, Title 12, corporate license fees imposed pursuant to Chapter 20, Title 12, and insurance premium and retaliatory taxes imposed pursuant to Chapter 7, Title 38, to be termed the South Carolina housing tax credit, and is allowed with respect to each qualified project placed in service on or after January 1, 2021, in an amount equal to the federal housing tax credit allowed with respect to such qualified project. In computing a tax payable by a taxpayer pursuant to Section 38-7-90, the credit allowed pursuant to this section must be treated as a premium tax paid pursuant to Section 38-7-20.

(2)(a) If under Section 42 of the Internal Revenue Code of 1986, as amended, a portion of any federal housing tax credit taken on a project is required to be recaptured, the taxpayer claiming any state tax credit with respect to such project is

also required to recapture a portion of any state tax credit authorized by this section. The state recapture amount is equal to the proportion of the state tax credit claimed by the taxpayer that equals the proportion the federal recapture amount bears to the original federal housing tax credit amount subject to recapture.

(b) In the event that recapture of any South Carolina housing tax credit is required, any amended return submitted to the department, as provided in this section, shall include the proportion of the state tax credit required to be recaptured, the identity of each taxpayer subject to the recapture, and the amount of tax credit previously allocated to such taxpayer.

(3) The total amount of the tax credit allowed by this section for a taxable year may not exceed the taxpayer's income tax liability. Any unused tax credit may be carried forward to apply to the taxpayer's next five succeeding years' tax liability. The taxpayer may not apply the credit against any prior tax years' tax liability.

(4) The tax credit allowed by this section, and any recaptured tax credit, must be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, regardless of whether such persons are allocated or allowed any portion of the federal housing tax credit with respect to the project.

(C) The department, in consultation with the South Carolina State Housing Finance and Development Authority, may adopt criteria and policies necessary to implement and administer the provisions of this section.

(D) Notwithstanding another provision of law, once a qualified project becomes eligible for the credit allowed by this section, for that year and for the next ten calendar years, all property that makes up the qualified project is exempt from all fees and taxes imposed by the municipality in which it is located, including, but not limited to: property taxes, impact fees, development fees, sewer fees, wastewater fees, sanitation fees, infrastructure fees, administrative fees, permit fees, and planning fees."

SECTION 4. Section 12-6-3360(C) of the 1976, as last amended by Act 83 of 2019, is further amended to read:

" (C)(1) Subject to the conditions provided in subsection (M) ~~of this section~~, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full-time job created, if the minimum level of new jobs is maintained. The credit is available to taxpayers that increase employment by ten or more full-time jobs, and no credit is allowed for the year or ~~any~~ a subsequent year in

which the net employment increase falls below the minimum level of ten. The amount of the initial job credit is as follows:

(a) twenty-five thousand dollars for each new full-time job created in "Tier IV" counties;

(b) twenty thousand two hundred fifty dollars for each new full-time job created in "Tier III" counties;

(c) two thousand seven hundred fifty dollars for each new full-time job created in "Tier II" counties; and

(d) one thousand five hundred dollars for each new full-time job created in "Tier I" counties.

(2)(a) Subject to the conditions provided in subsection (M) ~~of this section~~, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full-time job created if the minimum level of new jobs is maintained. The credit is available to taxpayers with ninety-nine or fewer employees that increase employment by two or more full-time jobs, and may be received only if the gross wages of the full-time jobs created pursuant to this section amount to a minimum of one hundred twenty percent of the county's or state's average per capita income, whichever is lower. No credit is allowed for the year or any subsequent year in which the net employment increase falls below the minimum level of two. The amount of the initial job credit is as described in subsection (C)(1).

(b) If the taxpayer with ninety-nine or fewer employees increases employment by two or more full-time jobs but the gross wages do not amount to a minimum one hundred twenty percent of the county's or state's average per capita income, whichever is lower, then the amount of the initial job credit is reduced by fifty percent.

(3) In addition to the job tax credits provided by this section, if a new job is created in an opportunity zone located in a Tier III county, an additional tax credit of one thousand five hundred forty dollars per new job created is provided, and if a new job is created in an opportunity zone located in a Tier IV county, an additional tax credit of one thousand seven hundred fifty dollars per new job created is provided. The term 'Opportunity Zone' has the same meaning as stated in Section 1400Z-1 of the Internal Revenue Code. To qualify for the additional jobs tax credit provided by this item, all other requirements of this section must be met."

SECTION 5. Chapter 36, Title 12 of the 1976 Code is amended by adding:

"Article 27
Food Desert Sales Tax Rebate

Section 12-36-2700. As used in this article, the following definitions apply:

(1) 'Grocery store' means an entity whose primary business is selling food at retail to the general public for off-premises consumption and at least twenty percent of the gross receipts are derived from the retail sale of fresh produce, meats, and dairy products.

(2) 'Opportunity Zone' means the same as stated in Section 1400Z-1 of the Internal Revenue Code.

(3) 'Executive director' means the Executive Director of the State Housing, Finance, and Development Authority.

(4) "Food Desert" means an area described in Section 12-36-2710 lacking a grocery store convenient to residents in the area.

Section 12-36-2710. The executive director may certify to a retail grocery store chain or to a single retailer operating a grocery store or stores, upon application, that no grocery store exists or is under construction in a federally designated Opportunity Zone within one-half mile of a moderate- to low-income housing project operated or funded by the Authority or a local housing authority under the provisions of Chapter 3, Title 31, or within one-half mile of a housing project to which federal and state tax credits are available under the provisions of Section 12-6-3810. If such a certification is made, and the retail grocery store chain or operator subsequently locates a grocery store in the area within three years of the certification, five percent of the sales taxes due every reporting period for a period of ten years derived from sales at that location, notwithstanding another provision of law, may be retained by the retailer/vendor and shown as a credit against the sales taxes due on that return.

Section 12-36-2720. The sales taxes to which the provisions of Section 12-36-2710 apply include all state and local option sales taxes.

Section 12-36-2730. The sales tax credit provided by this article is in addition to any other tax credits which may be available to that retailer/vendor under other provisions of law, including Section 12-6-3805."

SECTION 6. Chapter 1, Title 13 of the 1976 Code is amended by adding:

"Section 13-1-35. The Department of Commerce shall establish a revolving fund with monies as may be appropriated by the General Assembly to operate a grant program to provide nonrecurring aid to taxpayers investing in projects to be located in a designated federal Opportunity Zone in a county classified as a Tier III or Tier IV county. The grant must be used to provide financial assistance to the taxpayer in offsetting infrastructure and other costs associated with the project. The department must manage the fund and promulgate regulations setting forth the requirements for a taxpayer to become an aid recipient. In making aid determinations, the department by regulation must establish a priority system where projects located in those counties with the most critical economic needs shall receive priority funding first, based on the requirements developed by the department."

SECTION 7. Chapter 1, Title 13 of the 1976 Code is amended by adding:

"Section 13-1-47. The South Carolina Opportunity Zone Leadership Task Force is established within the Department of Commerce, to be chaired by the Secretary of Commerce, to assist in accomplishing the economic and other objectives within the Opportunity Zones in this State. The Secretary shall appoint to the task force those members of the department considered necessary to accomplish the goals and objectives of the task force. The task force, among other functions, shall hold regional summits throughout the State and develop a plan that aligns the goals of the Opportunity Zone's program with State priorities. The task force also shall develop plans to partner with local governments and public and private stakeholders to assist in developing investments in Opportunity Zones. Lastly, the task force shall establish within the department's website an additional new site entitled 'The South Carolina Opportunity Zone Information Exchange' to provide a place for the public and private sector to tract projects, find incentive information, and locate businesses within the Opportunity Zones."

SECTION 8. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 9. This act takes effect as follows:

- (1) Sections 1, 6, 7, 8, and 9 take effect upon approval by the Governor.

(2) Sections 2, 4, and 5 relating to income tax credits and other credits, apply to tax years beginning on or after January 1, 2021, in regard to new investments made in Opportunity Zones on or after that date.

(3) Section 3 takes effect upon approval by the Governor and applies to qualified projects that receive an eligibility statement pursuant to Section 12-6-3810 after January 1, 2021.

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This web page was last updated on December 11, 2020 at 5:07 PM