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AGENCY: State Fiscal Accountability Authority, Executive Director

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SUBJECT: Allocation and Management of Volume Cap; Approval for Issuance of Bonds for Multi-Family Housing Projects

The Workforce and Senior Affordable Housing Act (Act No. 137 of 2020) allowed for a tax credit to encourage the development of low-income multi-family housing. As a result, demand for volume cap in connection with the issuance of multi-family housing revenue bonds has been exceptionally strong. The volume of interest in the Low-Income Housing Tax Credit program and the substantial impact on the State's general fund were both unexpected. The State Fiscal Accountability Authority anticipates the General Assembly will enact legislation to address the issues that have surfaced. Accordingly, the State Fiscal Accountability Authority intends to defer any forthcoming request from a state or local housing authority that seeks approval to issue multi-family housing bonds pursuant to §31-13-90 or §31-13-220, or an allocation of state ceiling pursuant to Article 3 of Title 1, Chapter 11. The Authority also intends to provide prospective guidance for the allocation and management of volume cap, as well as for approval for the issuance of bonds for multi-family housing projects.

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AUTHORITY ACTION REQUESTED:

(a) Any request from a state or local housing authority that seeks approval to issue multi-family housing bonds pursuant to §31-13-90 or §31-13-220, or an allocation of state ceiling pursuant to Article 3 of Title 1, Chapter 11, is deferred until either new legislation is enacted or July 1, 2022, whichever comes first. Accordingly, such requests should not be placed on the agenda.

Independent of the foregoing:

(b) The Authority's Secretary is directed not to shift volume cap between the state and local pools to accommodate the approval of a specific project for ceiling allocation absent specific instructions from the Authority.

(c) The Authority will exercise conservative discretion in addressing any request to (i) reinstate or extend the validity of previously allocated volume cap, (ii) allocate volume cap to a project if previously allocated volume cap was allowed to expire, (iii) allocate additional volume cap to a project, (iv) approve single-project allocations for carry-forward election, or (v) approve carry-forward elections prior to the fourth quarter of the calendar year to which the volume cap applies.

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(d) Any request from a state or local housing authority that seeks approval to issue multi-family housing bonds pursuant to §31-13-90 or §31-13-220, or an allocation of state ceiling pursuant to Article 3 of Title 1, Chapter 11, is deferred until the project has received both a Certificate of Allocating Agency Letter and a State Tax Credit Letter. Accordingly, such requests should not be placed on the agenda.

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ATTACHMENTS:

SC Code of Law Sections 1-11-510; 1-11-540, 12-6-3795; 31-13-90; 31-13-220

**SECTION 1-11-510.** Allocation of bond limit amounts.

(A) The private activity bond limit for all issuing authorities must be allocated by the board in response to authorized requests as described in Section 1-11-530 by the issuing authorities.

(B) The aggregate private activity bond limit amount for all South Carolina issuing authorities is allocated initially to the State for further allocation within the limits prescribed herein.

(C) Except as is provided in Section 1-11-540, all allocations must be made by the board on a first-come, first-served basis, to be determined by the date and time sequence in which complete authorized requests are received by the board secretary.

HISTORY: 1987 Act No. 117, Section 2.

**SECTION 1-11-540.** Limitations on allocations.

(A) The board, with review and comment by the committee, may disapprove, reduce, or defer any authorized request. If it becomes necessary to exercise this authority, the board and the committee shall take into account the public interest in promoting economic growth and job creation.

(B) Authorized requests for state ceiling allocations of more than ten million dollars for a single project are deferred until after July first unless the board, after review and comment by the committee, determines in any particular instance that the positive impact upon the State of approving an allocation of an amount greater than ten million dollars is of such significance that approval of the allocation is warranted.

HISTORY: 1987 Act No. 117, Section 5.

**SECTION 12-6-3795.** South Carolina housing tax credit.

(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.

(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 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.

(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 after January 1, 2020, and before December 31, 2030, 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 also is 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)(1) The authority shall promulgate rules establishing criteria upon which the eligibility statements are issued which must include consideration of evidence of local support for the project. The eligibility statement must specify the amount of the South Carolina housing tax credit allowed.

(2) The authority may not issue an eligibility statement until the taxpayer provides a report to the authority detailing how the state credit authorized by this section will benefit the tenants of the project, once placed in service including, but not limited to, reduced rent, or why the state credit authorized by this section is necessary to undertake the project.

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

HISTORY: 2020 Act No. 137 (H.3998), Section 2, eff May 14, 2020.

Editor's Note

2020 Act No. 137, Sections 1 and 4, provide as follows:

"SECTION 1. This act may be cited as the 'Workforce and Senior Affordable Housing Act'."

"SECTION 4. This act takes effect upon approval by the Governor and first applies to qualified projects that receive an eligibility statement pursuant to Section 12-6-3795 thereafter."

**SECTION 31-13-90.** Issuance of notes or bonds for multi-family housing; approval by State Fiscal Accountability Authority.

It is intended by the provisions of this section and Sections 31-3-20(15) and (17) and 31-3-540 that the city, county, and regional housing authorities have the same powers presently granted to the State Housing Finance and Development Authority by the provisions of Sections 31-13-160 through 31-13-330 with respect to multi-family housing only. The provisions of this section and Sections 31-3-20(15) and (17) and 31-3-540 do not apply to the financing, acquisition, or construction of single family dwellings by the State Housing Finance and Development Authority.

Following a determination made by an Authority that a series of notes or bonds must be sold and a finding that the revenues or other moneys estimated to thereafter be available for the repayment thereof will provide moneys required for the payment of the principal and interest on the notes and bonds outstanding and the notes or bonds then proposed to be issued, the Authority shall submit the following information to the State Fiscal Accountability Authority:

- (1) the principal amount of the notes or bonds proposed to be issued.
- (2) the purpose or purposes for which the proceeds of such notes or bonds are to be expended.
- (3) the maturity schedule of the notes or bonds proposed to be issued.
- (4) a schedule showing the annual debt service requirements on all outstanding notes or bonds of the Authority.
- (5) a schedule showing the amount and source of revenues available for the payment of the debt service requirements established by the schedule required in item (4).
- (6) the method to be employed in selling the proposed notes or bonds.
- (7) any other information which the State Fiscal Accountability Authority shall require.

If the State Fiscal Accountability Authority shall determine that the funds estimated to thereafter be available for the repayment of the Authority's notes and bonds, including the proposed notes or bonds, will be sufficient to provide for the payment of the principal and interest on the Authority's notes and bonds thereafter to be outstanding as they become due, the State Fiscal Accountability Authority is authorized to give its approval to the issuance, in whole or in part, of the proposed notes or bonds, subject to such conditions, if any, as it may impose.

HISTORY: 1986 Act No. 369, Section 1; 1988 Act No. 538, Section 2; redesignated from Section 31-3-180 by 1992 Act No. 410, Section 3.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 31-13-220.** Information required by State Fiscal Accountability Authority.

Following a determination made by the Authority that a series of notes or bonds must be sold and a finding that the revenues or other moneys estimated to thereafter be available for the repayment thereof will provide moneys required for the payment of the principal and interest on the notes and bonds outstanding and the notes or bonds then proposed to be issued, the Authority shall submit the following information to the State Fiscal Accountability Authority:

- (1) The principal amount of the notes or bonds proposed to be issued.
- (2) The purpose or purposes for which the proceeds of such notes or bonds are to be expended.
- (3) The maturity schedule of the notes or bonds proposed to be issued.
- (4) A schedule showing the annual debt service requirements on all outstanding notes or bonds of the Authority.
- (5) A schedule showing the amount and source of revenues available for the payment of the debt service requirements established by the schedule required in item (4).
- (6) The method to be employed in selling the proposed notes or bonds.
- (7) Any other information which the State Fiscal Accountability Authority shall require.

If the State Fiscal Accountability Authority shall determine that the funds estimated to thereafter be available for the repayment of the Authority's notes and bonds, including the proposed notes or bonds, will be sufficient to provide for the payment of the principal and interest on the Authority's notes and bonds thereafter to be outstanding as they become due, the State Fiscal Accountability Authority is authorized to give its approval to the issuance, in whole or in part, of the proposed notes or bonds, subject to such conditions, if any, as it may impose.

HISTORY: 1977 Act No. 76, Section 6.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former

State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.