

Regular Session, 2009

SENATE BILL NO. 227

BY SENATOR GRAY

TAX/TAXATION. Provides for recommendations for tax credits for individuals and developers for certain housing projects. (gov sig)

1 AN ACT

2 To enact R.S. 47:12.1, relative to housing; to provide for tax credits against certain taxes for  
3 individuals and developers for certain housing projects; and to provide for related  
4 matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 47:12.1 is hereby enacted to read as follows:

7 **§12.1. State low-income housing credit**

8 **A. There shall be allowed as a credit against the amount of individual**  
9 **income tax, corporate income tax or corporate franchise tax owed by a taxpayer**  
10 **a state low-income housing credit in an amount equal to the amount determined**  
11 **pursuant to Subsection C of this Section which shall be computed in accordance**  
12 **with the provision of Section 42 of the Internal Revenue Code of 1986, as**  
13 **amended, except as the calculations and definitions in that Section are modified**  
14 **in this Section.**

15 **B.(1) The amount of the credit allocated to any project shall be**  
16 **authorized by the credit agency based on a project's need for the credit for**  
17 **economic feasibility.**

1           **(a) The low-income housing project shall meet all of the following**  
2 **requirements:**

3           **(i) It shall be located in a state enterprise zone.**

4           **(ii) It shall involve the material participation (within the meaning of**  
5 **Section 469(h) of the 1986 Code) of a qualified non-profit organization in the**  
6 **development and operation of the project throughout the compliance period**  
7 **and extended use period.**

8           **(iii) It shall involve the education and training of the residents of the**  
9 **low-income units for job opportunities identified by local workforce investment**  
10 **boards.**

11           **(iv) It shall involve tenants in the management and operation of the**  
12 **project through a limited equity housing cooperative which is contractually**  
13 **entitled to acquire the project at the end of the compliance period at the**  
14 **minimum purchase price as defined in Section 42 of the 1986 Code.**

15           **(v) It shall meet either of the following requirements:**

16           **(aa) It shall have been allocated by the credit agency a credit for federal**  
17 **income tax purposes under Section 42 of the 1986 Code.**

18           **(bb) It shall qualify for a credit under Section 42(h)(4)(B) of the 1986**  
19 **Code.**

20           **(b) The credit agency may impose fees for the credit under this Section**  
21 **not in excess of twenty-five percent of the fees required for applications for the**  
22 **tax credit pursuant to Section 42 of the 1986 Code.**

23           **(2)(a) The credit agency shall certify to the taxpayer the amount of tax**  
24 **credit under this Section to which the taxpayer is entitled for each year in the**  
25 **credit period.**

26           **(b) The taxpayer shall provide proof of the certification to any return**  
27 **upon which a tax credit is claimed under this Section.**

28           **(c) In the case of a failure to provide proof of the certification for the**  
29 **year to the return in which a tax credit is claimed under this Section, no credit**

1 under the Section shall be allowed for that year until a copy of the certification  
2 is provided.

3 C. Section 42(b) of the 1986 Code shall be deemed modified as follows:

4 (1) In the case of any qualified low-income building placed in service by  
5 the taxpayer during 2009, the term "applicable percentage" means nine percent  
6 for each of the first three years and three percent for the fourth year for new  
7 buildings (whether or not the building is federally subsidized) and for existing  
8 buildings.

9 (2) In the case of any qualified low-income building placed in service by  
10 the taxpayer after 2009 (for new buildings whether or not the building is  
11 federally subsidized and for existing buildings), the term "applicable  
12 percentage" means either of the following:

13 (a) For each of the first three years, the highest percentage prescribed  
14 under Section 42(b)(2) of the 1986 Code, for the month in which the building is  
15 placed in service, in lieu of the percentage prescribed in Section 42(b)(1)(A) of  
16 the 1986 Code.

17 (b) For the fourth year, the difference between thirty percent and the  
18 sum of the applicable percentages for the first three years.

19 D. The term "qualified low-income housing project" as defined in  
20 Section 42(c)(2) of the 1986 Code shall be deemed modified by adding the  
21 following requirements:

22 (1) The taxpayer shall be entitled to receive a cumulative cash  
23 distribution on the taxpayer's cash invested in the qualified low-income housing  
24 project in an amount not to exceed eight percent per annum. For purposes of  
25 this Paragraph, if the taxpayer is a partnership or an S corporation, the  
26 limitation on return shall apply to each of the partners or the shareholders,  
27 respectively.

28 (2) The taxpayer shall apply any cash available for distribution in excess  
29 of the amount eligible to be distributed under Paragraph (1) to reduce any

1 mortgage loan on the project or to fund operating and maintenance reserves as  
2 approved by the credit agency.

3 E. The provisions of Section 42(f) of the 1986 Code shall be deemed  
4 modified as follows:

5 (1) The term "credit period" as defined in Section 42(f)(1) of the 1986  
6 Code is modified by substituting "four taxable years" for "ten taxable years."

7 (2) The special rule for the first taxable year of the credit period under  
8 Section 42(f)(2) of the 1986 Code shall not apply to the tax credit under this  
9 Section.

10 F. The provisions of Section 42(h) of the 1986 Code shall be deemed  
11 modified as follows:

12 Section 42(h)(2) of the 1986 Code shall not be applicable and instead the  
13 following provisions shall be applicable:

14 (1) The total amount for the four-year period of the housing credit  
15 dollars allocated in a calendar year to any building shall reduce the aggregate  
16 housing credit dollar amount of the credit agency for the calendar year in which  
17 the allocation is made.

18 (2) The total amount for the four-year credit period of the housing credit  
19 dollars allocated in a calendar year to any building shall reduce the aggregate  
20 housing credit dollar amount of the credit agency for the calendar year in which  
21 the allocation is made.

22 G.(1) Except as provided in Paragraph (2), the aggregate housing credit  
23 dollar amount which may be allocated annually by the credit agency for the  
24 2009, 2010, and 2011 calendar years pursuant to this Section shall be an amount  
25 equal to twenty-five cents multiplied by the state population in that year.

26 (2) The portion of the aggregate housing credit dollar amount of the  
27 credit agency which is not allocated for each of the calendar years may be  
28 carried over to any subsequent calendar years through 2011.

29 H.(1) The term "compliance period" as defined in Section 42(i)(1) of the

1       1986 Code is modified to mean, with respect to any building, the period of thirty  
2       consecutive taxable years beginning with the first taxable year of the credit  
3       period with respect thereto, subject to the limitation in Paragraph (2).

4               (2) If, after the first fifteen years of the compliance period, title to the  
5       qualified low-income housing project is not transferred to the limited equity  
6       housing cooperative, the taxpayer shall continue to maintain the units as  
7       low-income units subject to the set-aside and rent requirements for an  
8       additional thirty years.

9               I. Section 42(j) of the 1986 Code shall not be applicable and the  
10       following shall be substituted in its place:

11               (1) The requirements of this Section shall be set forth in a regulatory  
12       agreement between the credit agency and the taxpayer.

13               (2) The regulatory agreement shall include, but not be limited to, the  
14       following:

15                       (a) A term equal to the compliance period.

16                       (b) A requirement that the agreement be filed in the official records of  
17       the parish in which the qualified low-income housing project is located.

18                       (c) A provision stating which state and local agencies can enforce the  
19       regulatory agreement in the event the taxpayer fails to satisfy any of the  
20       requirements of this Section.

21                       (d) A provision that the regulatory agreement shall be deemed a  
22       contract enforceable by tenants and third-party beneficiaries thereto.

23                       (e) A provision incorporating the requirements of Section 42 of the 1986  
24       Code as modified by this Section.

25                       (f) A requirement that the taxpayer provide the credit agency, or its  
26       designee, and the local agency that can enforce the regulatory agreement with  
27       advance notice if the taxpayer intends to reduce the number of low-income  
28       units.

29                       (g) A requirement that the taxpayer notify the credit agency, or its

1 designee, and the local agency that can enforce the regulatory agreement if  
2 there is a determination by the Internal Revenue Service that the project is not  
3 in compliance with Section 42(g) of the 1986 Code.

4 (h) A requirement that the taxpayer, as security for the performance of  
5 taxpayer's obligations under the regulatory agreement, assign the taxpayer's  
6 interest in rents which it receives from the project, provided that until there is  
7 a default under the regulatory agreement the taxpayer is entitled to collect and  
8 retain the rents.

9 (3) The remedies available in the event of a default under the regulatory  
10 agreement that is not cured within a reasonable cure period, include, but are  
11 not limited to:

12 (a) Allowing any of the parties designated to enforce the regulatory  
13 agreement to collect all rents with respect to the project;

14 (b) Taking possession of the project and operating the project in  
15 accordance with the regulatory agreement until the enforcer determines the  
16 taxpayer is in a position to operate the project in accordance with the regulatory  
17 agreement;

18 (c) Applying to any court for specific performance;

19 (d) Securing the appointment of a receiver to operate the project; or

20 (e) Any other relief as may be appropriate.

21 J. In allocating the housing credit, the credit agency shall give priority  
22 to qualified low-income housing projects that satisfy the following criteria,  
23 which are weighted according to the numerical order of the Paragraphs listed  
24 below:

25 (1) Projects that have received government financing or mortgage  
26 assistance.

27 (2) Projects that commit to providing low-income units for a  
28 significantly longer period than the compliance period under this Section.

29 (3) Projects that commit to charging rent for low-income units that is

1 less than the rent requirements under Section 42(g)(2) of the 1986 Code.

2 (4)(a) Projects for which the rate of return on cash investment is less  
3 than the rate allowed under this Section.

4 (b) Projects targeted to those groups identified in the state's qualified  
5 allocation plan as having special needs, including projects that ensure that rural  
6 areas receive a proportionate share of the housing credits.

7 K. Section 42(l) of the 1986 Code shall be modified as follows: the term  
8 "secretary" shall be replaced by the term "credit agency."

9 L. In the case where the credit allowed under this Section exceeds the  
10 net tax for the taxable year, that portion of the credit which exceeds the net tax  
11 may be carried over to the net tax in succeeding taxable years with respect to  
12 which this Section shall remain in effect for purposes of carrying over excess  
13 credit, until this credit is used. The credit shall be applied first to the earliest  
14 years possible.

15 M. The aggregate amount of tax credits granted pursuant to this Section  
16 shall not exceed one million dollars per year. The credit agency shall not  
17 authorize any credit if the total amount of credit authorized in any year exceeds  
18 one million dollars.

19 N. This Section shall remain in effect only until January 1, 2012, and as  
20 of that date is void and ineffective, unless a later enacted statute, which is  
21 enacted before January 1, 2012, deletes or extends the date. However, any  
22 unused credit may be used beyond that date on the same basis and to the same  
23 extent as permitted under the law immediately prior to January 1, 2012.

24 O. As used in this Section:

25 (1) "1986 Code" means the Internal Revenue Code of 1986, as amended.

26 (2) "Credit agency" means the Louisiana Housing Finance Agency or  
27 any successor thereof.

28 Section 2. This Act shall become effective on July 1, 2009, and shall be applicable  
29 to any tax year beginning on or after that date.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Dawn Romero Watson.

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DIGEST

Proposed law provides a tax credit against state individual or corporate income tax or franchise tax allocated by the Louisiana Housing Finance Authority (LHFA) for providers of low income housing based on the provisions of law which grant a similar federal credit in Section 42 of the Internal Revenue Code, as definitions and procedures were modified by proposed law.

Proposed law provides the annual allocation of credits which may be made by LHFA to owners is \$0.25 times the population of the state, limited to \$1M.

Effective July 1, 2009, and applicable to tax years beginning on or after that date, and effective until January 1, 2012, provided that the tax credits may be used after that date.

(Adds R.S. 47:12.1)