Sixty-third
Legislative Assembly
of North Dakota

SECOND DRAFT:
Prepared by the Legislative Council staff for the
Energy Development and Transmission Committee
October 2012

Introduced by

A BILL for an Act to create and enact a new subsection to section 57-35.3-05 of the North Dakota Century Code, relating to a tax credit for contributions to the housing incentive fund; to amend and reenact subsection 3 of section 54-17-07.3 and sections 54-17-40, 54-17-41, and 57-38-01.32 of the North Dakota Century Code, relating to a multifamily housing finance program and to the housing incentive fund and tax credits; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 54-17-07.3 of the North Dakota Century Code is amended and reenacted as follows:

3. Multifamily housing finance program. A program or programs to provide financing directly or indirectly of construction, permanent, and combined construction and permanent mortgage loans, including participations in mortgage loans, for the acquisition, construction, refurbishing, reconstruction, rehabilitation, or improvement of multifamily housing facilities. <u>As part of the program, the industrial commission, acting in its capacity as a state housing finance agency, may enter a public and private partnership with any interested private entity and accept any gift, grant, or other type of financial aid or assistance, including a contribution to the housing incentive fund, to provide financing for the construction or rehabilitation of a multifamily housing facility in a developing community in the state to address an unmet housing need or alleviate a housing shortage. A private entity participating in this program may reserve a proportionate share of available units in the facility for occupancy by its workforce based on its financial participation in the facility, in addition to any units held for occupancy by individuals or families of low or moderate income.</u>

SECTION 2. AMENDMENT. Section 54-17-40 of the North Dakota Century Code is amended and reenacted as follows:

54-17-40. (Effective through June 30, ~~2013~~2015) Housing incentive fund - Continuing appropriation.

1. The housing incentive fund in an amount not to exceed fifty million dollars is created as a special revolving fund at the Bank of North Dakota. The housing finance agency may direct disbursements from the fund and a continuing appropriation from the fund is provided for that purpose.
2. After a public hearing, the housing finance agency shall create an annual allocation plan for the distribution of the fund. At least twenty-five percent of the fund must be used to assist developing communities ~~with a population of not more than ten thousand individuals~~ to address an unmet housing need or alleviate a housing shortage. ~~At least fifty percent~~A portion of the fund as determined by the housing finance agency in the annual allocation plan must be used to benefit ~~households with incomes at not more than fifty percent of the area median~~individuals and families of low or moderate income. The agency may collect a reasonable administrative fee from the fund, project developers, applicants, or grant recipients.
3. The housing finance agency shall adopt guidelines for the fund so as to address unmet housing needs in this state. Assistance from the fund may be used solely for:
   a. New construction, rehabilitation, or acquisition of a multifamily housing project;
   b. Gap assistance, matching funds, and accessibility improvements;
   c. Assistance that does not exceed the amount necessary to qualify for a loan using underwriting standards acceptable for secondary market financing or to make the project feasible; and
   d. Rental assistance, emergency assistance, or targeted supportive services designated to prevent homelessness.
4. Eligible recipients include units of local, state, and tribal government; local and tribal housing authorities; community action agencies; regional planning councils; and nonprofit organizations and for-profit developers of multifamily housing. Individuals may not receive direct assistance from the fund.

5. Except for subdivision d of subsection 3, assistance is subject to repayment or recapture under the guidelines adopted by the housing finance agency. Any assistance that is repaid or recaptured must be deposited in the fund and is appropriated on a continuing basis for the purposes of this section.

SECTION 3. AMENDMENT. Section 54-17-41 of the North Dakota Century Code is amended and reenacted as follows:

54-17-41. (Effective through June 30, ~~2013~~2015) Report.

Upon request, the housing finance agency shall report to the industrial commission on the activities of the housing incentive fund.

SECTION 4. A new subsection to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to the contribution to the housing incentive fund under section 54-17-40. For the purposes of the credit allowed in this subsection, subsections 2 through 8 of section 57-38-01.32 apply.

SECTION 5. AMENDMENT. Section 57-38-01.32 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.32. (Effective for the first two taxable years beginning after December 31, ~~2010~~2012) Housing incentive fund tax credit.

1. A taxpayer is entitled to a credit as determined under this section against state income tax liability under section 57-38-30 or 57-38-30.3 for contributing to the housing incentive fund under section 54-17-40. The amount of the credit is equal to the amount contributed to the fund during the taxable year.
2. North Dakota taxable income must be increased by the amount of the contribution upon which the credit under this section is computed but only to the extent the contribution reduced federal taxable income.
3. The contribution amount used to calculate the credit under this section may not be used to calculate any other state income tax deduction or credit allowed by law.
4. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the excess may be carried forward to each of the ten succeeding taxable years.

5. The aggregate amount of tax credits allowed to all eligible contributors is limited to ~~fifteen~~twenty million dollars per biennium. This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.
6. Within thirty days after the date on which a taxpayer makes a contribution to the housing incentive fund, the housing finance agency shall file with each contributing taxpayer, and a copy with the tax commissioner, completed forms that show as to each contribution to the fund by that taxpayer the following:
   a. The name, address, and social security number or federal employer identification number of the taxpayer that made the contribution.
   b. The dollar amount paid for the contribution by the taxpayer.
   c. The date the payment was received by the fund.
7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income or financial institutions tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.
8. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an examination of the credit claimed and assessing additional tax due under section 57-38-38.
9. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity making a contribution to the housing incentive fund under this section is considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 6. EFFECTIVE DATE - EXPIRATION DATE. Section 4 of this Act is effective for the first two taxable years beginning after December 31, 2012, and is thereafter ineffective.