

2021 Regular Session

HOUSE BILL NO. 685

BY REPRESENTATIVE NEWELL

TAX CREDITS: Establishes a state low-income housing tax credit for the development or construction of low-income housing

1 AN ACT

2 To enact R.S. 47:6042, relative to income and corporate franchise tax credits; to establish
3 a credit for certain low-income housing projects; to provide for the amount of the
4 credit; to provide for certain requirements and limitations; to provide for the
5 maximum amount of credits that may be authorized; to provide for a termination date
6 of the tax credit; to provide for applicability; to provide for an effective date; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6042 is hereby enacted to read as follows:

10 §6042. Credit; state low-income housing

11 A. In addition to the low-income housing tax credit established in federal law
12 pursuant to the provisions of 26 U.S.C. 42, there shall be allowed a credit against
13 state income or corporate franchise tax for any qualified low-income housing project,
14 referred to in this Section as "project", placed in service by the taxpayer claiming the
15 credit. The amount of the state credit for each of the first three years, calculated for
16 the month in which the project is placed in service, shall equal nine percent of the
17 federal credit amount determined pursuant to 26 U.S.C. 42(b). The amount of the
18 state credit in the fourth year shall equal three percent of the credit amount
19 determined pursuant to 26 U.S.C. 42(b).

1 B.(1) In order to qualify for the credit established pursuant to the provisions
2 of this Section, the project shall meet all of the following requirements:

3 (a) It shall be located in an enterprise zone.

4 (b) It shall include the material participation of a qualified non-profit
5 organization in the development and operation of the project throughout the
6 compliance period and extended use period.

7 (c) It shall include the education and training of the residents of the
8 low-income units for job opportunities identified by local workforce development
9 boards.

10 (d) It shall include tenants in the management and operation of the project
11 through a limited equity housing cooperative which is contractually entitled to
12 acquire the project at the end of the compliance period at the minimum purchase
13 price as defined in 26 U.S.C. 42.

14 (e) It shall have been allocated a credit for federal income tax purposes or
15 it shall have qualified for a credit pursuant to 26 U.S.C. 42.

16 (2) Notwithstanding the provisions of 26 U.S.C. 42(i)(1), in order to qualify
17 for the tax credits authorized pursuant to the provisions of this Section, the taxpayer
18 applying for the credit shall maintain units in the project as low-income units subject
19 to the set-aside and rent requirements required by 26 U.S.C. 42 for thirty consecutive
20 taxable years beginning with the first taxable year the taxpayer receives the credit.

21 C.(1) The total amount of credits certified by the Louisiana Housing
22 Corporation, referred to in this Section as "corporation", and granted by the
23 Department of Revenue to be claimed on an income or corporate franchise tax return
24 pursuant to the provisions of this Section shall not exceed one million dollars per
25 calendar year. The granting of credits shall be on a first-come, first-served basis. If
26 the total amount of credits claimed in any particular calendar year exceeds the
27 amount of tax credits authorized for that year, the excess shall be treated as having
28 been applied for on the first day of the subsequent year. All requests received on the
29 same business day shall be treated as received at the same time, and if the aggregate

1 amount of the requests received on a single business day exceeds the total amount
2 of available tax credits, tax credits shall be approved on a pro rata basis.

3 (2) If the amount of the credit granted pursuant to the provisions of this
4 Section exceeds the amount of the taxpayer's tax liability for that year, the excess
5 credit amounts may be carried forward as a credit against subsequent Louisiana
6 income or franchise tax liability for a period not to exceed five years.

7 D.(1) The taxpayer applying for the credit authorized pursuant to the
8 provisions of this Section shall submit an application to the executive director of the
9 corporation on a form prescribed by the executive director. The executive director
10 shall review the application to determine whether the applicant meets all of the
11 requirements of Subsection B of this Section and consider the factors provided in
12 Paragraph (2) of this Subsection. If the executive director certifies the application,
13 the executive director shall enter into a written agreement with the taxpayer applying
14 for the tax credit which shall include the following:

15 (a) A term which shall not exceed thirty consecutive taxable years.

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

18 (c) A provision that the agreement shall be deemed a contract enforceable
19 by tenants and third-party beneficiaries of the agreement.

20 (d) A requirement that the taxpayer provide the corporation, or its designee,
21 with advance notice if the taxpayer intends to reduce the number of low-income
22 units.

23 (e) A requirement that the taxpayer notify the corporation, or its designee,
24 if there is a determination by the Internal Revenue Service that the project is not in
25 compliance with 26 U.S.C. 42(g).

26 (f) A requirement that the taxpayer, as security for the performance of the
27 taxpayer's obligations under the agreement, assign the taxpayer's interest in rents it
28 receives from the project, provided that until there is a default under the agreement,
29 the corporation is entitled to collect and retain the rents.

1 (2) In determining the certification of tax credits, the executive director shall
2 consider the following factors:

3 (a) Projects that have received government financing or mortgage assistance.

4 (b) Projects that commit to providing low-income units for a longer period
5 than the compliance period provided pursuant to this Section.

6 (c) Projects that commit to charging less rent for low-income units than the
7 rent requirements provided in 26 U.S.C. 42(g)(2).

8 (d) Projects targeted to groups identified as having special needs, including
9 projects that ensure that rural areas receive a proportionate share of tax credits for
10 housing.

11 (3) After the executive director certifies that the applicant meets all of the
12 requirements of Subsection B of this Section, the executive director shall notify the
13 secretary of the Department of Revenue in writing within thirty days of certifying an
14 application and shall certify the amount of tax credit authorized pursuant to the
15 provisions of this Section to which the taxpayer is entitled for each year in the credit
16 period. When claiming the tax credit on a tax return, the taxpayer shall provide
17 proof of the certification to any return upon which a tax credit is claimed under this
18 Section.

19 E. Tax credits granted pursuant to the provisions of this Section but later
20 disallowed in whole or in part may be recovered by the secretary of the Department
21 of Revenue from the taxpayer applicant through any collection remedy authorized
22 by R.S. 47:1561 that is initiated within three years from December thirty-first of the
23 year in which the credit was originally granted. The only interest that may be
24 assessed and collected on recovered credits is interest at the rate of three percentage
25 points above the rate provided for in R.S. 9:3500(B)(1) which shall be computed
26 from the original due date of the return on which the disallowed credit was taken.

27 F. No credit shall be certified by the corporation or granted by the
28 Department of Revenue after December 31, 2027.

1 Section 2. The provisions of this Act shall be applicable to tax years beginning on
2 or after January 1, 2022.

3 Section 3. This Act shall become effective on January 1, 2022.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 685 Original

2021 Regular Session

Newell

Abstract: Establishes an income or corporate franchise tax credit for any qualified low-income housing project placed in service by the taxpayer claiming the credit.

Proposed law authorizes the establishment of an income or corporate franchise tax credit for any qualified low-income housing project (project) placed in service by the taxpayer claiming the credit. The state credit shall be in addition to the tax credit authorized pursuant to present federal law (26 U.S.C. 42). The amount of the state credit for each of the first three years, calculated for the month in which the project is placed in service, shall equal 9% of the amount of the federal credit. The amount of the credit in the fourth year shall equal 3% of the amount of the federal credit.

Proposed law requires a project to meet the following in order to qualify for the credit:

- (1) Be located in an enterprise zone.
- (2) Include participation of a qualified non-profit organization in the development and operation of the project throughout the compliance period and extended use period.
- (3) Include the education and training of the residents of the low-income units for job opportunities identified by local workforce development boards.
- (4) Include tenants in the management and operation of the project through a limited equity housing cooperative which is contractually entitled to acquire the project at the end of the compliance period at the minimum purchase price as defined in federal law.
- (5) Be allocated or qualified for a credit for federal income tax purposes.

Proposed law requires the taxpayer applying for the credit to maintain units in the project as low-income units subject to the set-aside and rent requirements required under federal law for 30 consecutive taxable years beginning with the first taxable year the taxpayer receives the credit.

Proposed law limits the total amount of credits certified by the La. Housing Corporation (corporation) and granted by the Dept. of Revenue (DOR) to be claimed on an income or franchise tax return to \$1M per calendar year. Requires the granting of credits to be on a first-come, first-served basis and if the total amount of credits claimed in a year exceeds the amount of tax credits authorized for that year, the excess shall be treated as having been applied for on the first day of the subsequent year. Requests received on the same business day shall be treated as received at the same time, and if the aggregate amount of the requests received on a single business day exceeds the total amount of available tax credits, tax credits shall be approved on a pro rata basis.

Proposed law provides that if the amount of the credit exceeds the taxpayer's tax liability for that year, the excess credit amounts may be carried forward as a credit against subsequent income or franchise tax liability for a period not to exceed five years.

Proposed law requires the taxpayer applying for the credit to submit an application to the executive director of the corporation on a form prescribed by the executive director. Requires the executive director to review the application to determine whether the applicant meets all of the requirements of proposed law. If the executive director certifies the application, the executive director shall enter into a written agreement with the taxpayer. Proposed law provides requirements for the written agreement.

Proposed law requires the executive director to consider certain when determining the certification of tax credits.

Proposed law requires the executive director of the corporation to notify the secretary of DOR in writing within 30 days of certifying an application and to certify the amount of tax credit the taxpayer is entitled for each year in the credit period.

Proposed law provides for the recovery of disallowed credits.

Proposed law prohibits credits from being certified by the corporation or granted by DOR after Dec. 31, 2027.

Applicable to tax years beginning on or after Jan. 1, 2022.

Effective Jan. 1, 2022.

(Adds R.S. 47:6042)