

2023 Regular Session

HOUSE BILL NO. 452

BY REPRESENTATIVE BOURRIAQUE

TAX CREDITS: Establishes a tax credit for the development of certain affordable housing projects

1 AN ACT

2 To enact R.S. 47:6043, relative to tax credits; to authorize nonrefundable credits against  
3 income tax, corporate franchise tax, and insurance premium tax for qualified housing  
4 projects; to provide an application process for the tax credits; to provide for granting  
5 of the credits by the Louisiana Housing Corporation; to provide for agreements with  
6 respect to the credits; to authorize fees for applications for the credits; to provide for  
7 duties of the Department of Revenue and the Department of Insurance with respect  
8 to the credits; to authorize carrying forward of the credits; to provide for  
9 transferability of the credits; to authorize fees in connection with transfers of credits;  
10 to prohibit granting of credits after a certain date; to make granting of credits subject  
11 to appropriation; to require promulgation of administrative rules; to provide for  
12 applicability; to provide for effectiveness; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. R.S. 47:6043 is hereby enacted to read as follows:

15 §6043. Tax credit; workforce housing

16 A.(1) There shall be allowed a nonrefundable credit against income tax,  
17 corporation franchise tax, and insurance premium tax liability which shall be claimed  
18 beginning with the taxable year in which a qualified project, as defined in Paragraph  
19 (2) of this Subsection, is placed in service. The amount of the credit shall be equal

1 to the aggregate federal credit initially determined pursuant to 26 U.S.C.  
2 42(b)(1)(B)(ii).

3 (2) As used in this Section, the following terms shall have the meanings  
4 ascribed to them in this Paragraph:

5 (a) "Insurance premium tax" means any tax liability incurred by any entity  
6 pursuant to the provisions of R.S. 22:831, 836, 838, or 842 except for any liability  
7 incurred pursuant to R.S. 22:842(C).

8 (b) "Qualified project" means a housing project that qualifies for the federal  
9 low-income housing credit provided for in 26 U.S.C. 42.

10 B.(1) In order to qualify for the credit provided for in this Section, the owner  
11 of a qualified project shall submit an application to the executive director of the  
12 Louisiana Housing Corporation on a form prescribed by the executive director. The  
13 executive director shall award credits pursuant to this Section through the process  
14 outlined in the Qualified Allocation Plan of the Louisiana Housing Corporation.  
15 Prior to awarding credits to the owner of a qualified project, the executive director  
16 shall enter into a written agreement with that party which encompasses all of the  
17 following:

18 (a) A declaration of the amount of the award.

19 (b) A certification by the owner of a qualified project that the project  
20 qualifies for the federal low-income housing credit pursuant to 26 U.S.C. 42.

21 (c) A term of no less than thirty consecutive taxable years or other period set  
22 forth in the tax credit regulatory agreement.

23 (d) A requirement that the agreement be filed in the mortgage records of the  
24 parish in which the qualifying project is located.

25 (e) A provision establishing that the agreement shall be deemed a contract  
26 enforceable by tenants and third-party beneficiaries of the agreement.

27 (f) A requirement that the taxpayer notify the Louisiana Housing  
28 Corporation, or its designee, if there is a determination by the Internal Revenue  
29 Service that the project is not in compliance with 26 U.S.C. 42(g).

1           (2) After entering into an agreement with the taxpayer that meets the  
2           requirements of Paragraph (1) of this Subsection, the executive director of the  
3           Louisiana Housing Corporation shall submit written notification to the secretary of  
4           the Department of Revenue and the commissioner of insurance, within thirty days  
5           of the execution of the agreement, certifying the amount of tax credit awarded to the  
6           taxpayer in accordance with this Section contingent upon the qualified project being  
7           placed in service.

8           (3)(a) The total amount of credits granted by the Louisiana Housing  
9           Corporation in accordance with this Section shall not exceed five million dollars in  
10           any state fiscal year.

11           (b) The granting of credits authorized by this Section shall be on a  
12           first-come, first-served basis. If the total amount of credits claimed in a particular  
13           state fiscal year exceeds the amount of credits authorized for that year, the Louisiana  
14           Housing Corporation shall treat the excess as having been applied for on the first day  
15           of the subsequent state fiscal year. The corporation shall treat all requests received  
16           on the same business day as received at the same time. If the aggregate amount of  
17           the requests received on a single business day exceeds the total amount of available  
18           credits, the corporation shall approve tax credits on a pro rata basis.

19           (4)(a) The Louisiana Housing Corporation shall charge and collect a single  
20           application fee per credit application. The corporation shall establish the amount of  
21           the fee in rules promulgated in accordance with the Administrative Procedure Act.  
22           Notwithstanding any provision of law to the contrary, the House Committee on  
23           Ways and Means and the Senate Committee on Revenue and Fiscal Affairs shall  
24           have oversight authority with respect to the rules required by this Paragraph.

25           (b) The rules required by this Paragraph shall provide for an equitable  
26           distribution of application fee proceeds between the Louisiana Housing Corporation,  
27           the Department of Revenue, and the Department of Insurance.

1           C.(1) If the amount of the credit granted to a taxpayer for a taxable year  
2           exceeds the amount of the taxpayer's tax liability for that year, the excess credit  
3           amount may be carried forward for a period not to exceed five years.

4           (2)(a) If an owner of a qualified project receiving an award of a credit is a  
5           partnership, limited liability company, S corporation, or similar pass-through entity,  
6           the owner may allocate the credit among its partners, shareholders, members, or  
7           other constituent taxpayers in any manner agreed to by such persons and, in the case  
8           of multiple tiers of pass-through entities, the credit may be so allocated through any  
9           number of pass-through entities in any manner agreed by the owners of such entities,  
10           none of which shall be considered a transfer.

11           (b)(i) With respect to credits against income tax, corporation franchise tax,  
12           or both, the owner shall certify to the Department of Revenue the amount of credit  
13           allocated to each constituent taxpayer or shall notify the department that it has  
14           assigned the duty of certification to one such constituent taxpayer, which constituent  
15           taxpayer shall provide to the department the certification required by this Item. Each  
16           constituent taxpayer shall be allowed to claim such amount subject to any applicable  
17           restrictions provided in this Section.

18           (ii) With respect to credits against insurance premium tax, the owner shall  
19           certify to the Department of Insurance the amount of credit allocated to each  
20           constituent taxpayer or shall notify the department that it has assigned the duty of  
21           certification to one such constituent taxpayer, which constituent taxpayer shall  
22           provide to the department the certification required by this Item. Each constituent  
23           taxpayer shall be allowed to claim such amount subject to any applicable restrictions  
24           provided in this Section.

25           (c)(i) Transferors and transferees of credits against income tax or corporation  
26           franchise tax authorized by this Section shall submit to the Department of Revenue  
27           a written notification of any transfer or sale of such tax credits within ten business  
28           days after the transfer or sale of the credits. The notification shall be accompanied  
29           by a tax credit transfer processing fee. The Department of Revenue shall establish

1        the amount of the fee in rules promulgated in accordance with the Administrative  
2        Procedure Act.

3                (ii) Transferors and transferees of credits against insurance premium tax  
4        authorized by this Section shall submit to the Department of Insurance a written  
5        notification of any transfer or sale of such tax credits within ten business days after  
6        the transfer or sale of the credits. The notification shall be accompanied by a tax  
7        credit transfer processing fee. The Department of Insurance shall establish the  
8        amount of the fee in rules promulgated in accordance with the Administrative  
9        Procedure Act.

10               (iii) A "transfer", for purposes of the fee requirement provided in this  
11        Subparagraph, means an assignment, disposition, transfer, or allocation of tax  
12        credits. The notification required by Items (i) and (ii) of this Subparagraph shall  
13        include the transferor's tax credit balance prior to transfer, the credit identification  
14        number assigned by the Louisiana Housing Corporation, the remaining balance after  
15        transfer, all federal and Louisiana tax identification numbers for both transferor and  
16        transferee, the date of transfer, the amount transferred, and any other information  
17        required by the Department of Revenue or the Department of Insurance. Failure to  
18        comply with any notification requirement provided in this Subparagraph shall result  
19        in the disallowance of the tax credit until the parties are in full compliance with the  
20        requirement.

21               (3) A taxpayer who is awarded or allocated a tax credit authorized in this  
22        Section may elect to transfer or sell their unused credits to one or more individuals  
23        or entities. The taxpayer or any subsequent transferee may transfer or sell the tax  
24        credits an unlimited number of times.

25               (4) A taxpayer who claims a tax credit authorized in this Section shall not  
26        be required to pay any additional tax or any retaliatory tax levied by R.S. 22:836 as  
27        a result of claiming the credit.

28               D. The Louisiana Housing Corporation shall not grant any tax credits  
29        authorized in this Section after June 30, 2026.

1 Section 2. The provisions of Section 1 of this Act shall apply to taxable years  
2 beginning on or after January 1, 2024.

3 Section 3. The granting of any tax credits authorized in this Act shall be subject to  
4 appropriation by the legislature for this specific purpose.

5 Section 4. This Act shall become effective on July 1, 2023; if vetoed by the governor  
6 and subsequently approved by the legislature, this Act shall become effective on July 1,  
7 2023, or on the day following such approval by the legislature, whichever is later.

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### 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)]

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HB 452 Engrossed

2023 Regular Session

Bourriaque

**Abstract:** Establishes a state tax credit for the development of certain housing projects that qualify for federal affordable housing tax credits.

Proposed law authorizes a nonrefundable credit against income and corporation franchise taxes administered by the Dept. of Revenue, and against insurance premium taxes administered by the Dept. of Insurance, for affordable housing projects which meet the definition of "qualified project" provided in proposed law.

Proposed law defines "qualified project" as a housing project that qualifies for the federal low-income housing tax credit provided for in federal law (Internal Revenue Code (26 U.S.C. 42)).

Proposed law provides that the tax credit authorized therein shall be claimed beginning with the taxable year in which a qualified project is placed in service. Provides that the amount of the credit shall be equal to the aggregate federal credit initially determined pursuant to federal law (26 U.S.C. 42(b)(1)(B)(ii)).

Proposed law provides that in order to qualify for the credit authorized therein, the owner of a qualified project shall submit an application to the La. Housing Corp. Requires the executive director of the La. Housing Corp. to award credits through the process outlined in the corporation's Qualified Allocation Plan.

Proposed law stipulates that before awarding to the owner of a qualified project any credits provided for in proposed law, the executive director of the La. Housing Corp. shall enter into a written agreement with the project owner which encompasses terms and conditions applicable to the credits prescribed by proposed law. Requires the executive director of the La. Housing Corp. to submit notifications to the secretary of the Dept. of Revenue and the commissioner of insurance, within 30 days of the execution of the agreement, certifying the amount of tax credit awarded to a project owner contingent upon the qualified project being placed in service.

Proposed law authorizes the La. Housing Corp. to charge a fee in connection with applications for the tax credits. Authorizes the corporation to establish the amount of the fee by rule and requires that proceeds from the fee be distributed equitably among the corporation, the Dept. of Revenue, and the Dept. of Insurance.

Proposed law limits the total amount of credits to be granted by the La. Housing Corp. in accordance with proposed law to no more than \$5,000,000 in any state fiscal year.

Proposed law provides that if the amount of the credit granted to a taxpayer for a taxable year exceeds the amount of the taxpayer's tax liability for that year, the excess credit amount may be carried forward for a period not to exceed five years.

Proposed law provides for allocation of the credit among partners, shareholders, members, or other constituent taxpayers of partnerships, limited liability companies, S corporations, and similar pass-through entities.

Proposed law authorizes the sale and transfer of credits granted in accordance with proposed law.

Proposed law prohibits granting of any tax credits authorized by proposed law after June 30, 2026. Stipulates that the granting of such credits shall be subject to appropriation by the legislature for this specific purpose.

Proposed law becomes effective July 1, 2023, and applies to taxable years beginning on or after Jan. 1, 2024.

(Adds R.S. 47:6043)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Delete proposed law requiring that the tax credits provided for in proposed law be taken in equal installments each year over a period of six years.
2. Delete proposed law limiting the total amount of tax credits to be awarded by the La. Housing Corp. to no more than \$100,000,000 in any calendar year; provide instead that the total amount of tax credits to be granted by the La. Housing Corp. shall not exceed \$5,000,000 in any state fiscal year and that granting of credits is on a first-come, first served basis.
3. Change the date beyond which no credits provided for in proposed law will be granted from Dec. 31, 2029, to June 30, 2026.
4. Stipulate that the granting of any credits authorized by proposed law shall be subject to appropriation by the legislature for this specific purpose.