

Regular Session, 2009

SENATE BILL NO. 221

BY SENATOR BROOME

TAX/TAXATION. Establishes the State Housing Tax Credit Program to authorize the LHFA to determine which projects receiving reservations or allocations of federal low income housing tax credits shall receive refundable state income tax credits and to charge and expend fees therefor. (gov sig) (2/3 CA7s2.1(A))

1 AN ACT

2 To amend and reenact R.S. 47:2323(C) and to enact R.S. 47:2323(D) and 6035, relative to
3 ad valorem taxation; to provide relative to valuation of property for ad valorem
4 property tax purposes; to provide relative to exemption from state taxes; to establish
5 a state housing tax credit program; to provide with respect to rules and regulations;
6 to provide for an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:2323(C) is hereby amended and reenacted and R.S. 47:2323(D)
9 and 6035 are hereby enacted to read as follows:

10 §2323. Criteria for determining

11 * * *

12 C. Criteria.

13 **Except as provided for in Subsection D of this Section,** the fair market
14 value of real and personal property shall be determined by the following generally
15 recognized appraisal procedures: the market approach, the cost approach, and/or the
16 income approach.

17 (1) In utilizing the market approach, the assessor shall use an appraisal

1 technique in which the market value estimate is predicated upon prices paid in actual
2 market transactions and current listings.

3 (2) In utilizing the cost approach, the assessor shall use a method in which
4 the value of a property is derived by estimating the replacement or reproduction cost
5 of the improvements; deducting therefrom the estimated depreciation; and then
6 adding the market value of the land, if any.

7 (3) In utilizing the income approach, the assessor shall use an appraisal
8 technique in which the anticipated net income is processed to indicate the capital
9 amount of the investment which produces the net income.

10 **D. For the purpose of determining assessed valuation of property**
11 **subject to ad valorem taxation, the property shall be subject to the**
12 **requirements of R.S. 47:6035(E)(1) and (2).**

13 * * *

14 **§6035. State Housing Tax Credit Program**

15 **A. There is created the State Housing Tax Credit Program for the**
16 **purpose of stimulating creative private sector initiatives to increase the supply**
17 **of affordable housing in urban and rural areas and to provide associated**
18 **commercial facilities associated with such housing facilities.**

19 **B.(1) There shall be a credit against the income tax for those projects**
20 **that the Louisiana Housing Finance Agency determines are qualified projects**
21 **pursuant to this Section, being those projects receiving reservations and/or**
22 **allocations of federal low income housing tax credits, including, but not limited**
23 **to, prior approval of federal low income housing tax credits for Gulf**
24 **Opportunity Zone Act of 2005 and calendar year 2007 - 2008 per capita credit**
25 **ceiling projects. Such projects shall be considered designated projects under**
26 **this Section and eligible for the housing tax credit thereunder.**

27 **(2) The board of directors of the Louisiana Housing Finance Agency**
28 **shall establish the procedures necessary for proper allocation and distribution**
29 **of state housing tax credits, including the establishment of criteria for single-**

1 family or commercial components of such projects, and may exercise all powers
2 necessary to administer the allocation of such. The agency shall be authorized
3 to charge fees on the issuance of state housing tax credits.

4 (3) The agency shall prepare an annual plan, which must be approved
5 by the governor, containing general guidelines for the allocation and
6 distribution of credits to designated projects and a determination of the amount
7 of fees charged for the issuance of the credits.

8 C. The Louisiana Housing Finance Agency shall adopt allocation
9 procedures that will ensure the maximum use of available tax credits in order
10 to encourage development of low-income housing and associated mixed-use
11 projects in urban areas, taking into consideration the timeliness of the
12 application, the location of the proposed project, the relative need in the area
13 of revitalization and low-income housing and the availability of such housing,
14 the economic feasibility of the project, and the ability of the applicant to
15 proceed to completion of the project in the calendar year for which the credit
16 is sought.

17 D. (1) A taxpayer who wishes to participate in the State Housing Tax
18 Credit Program shall submit an application for tax credit to the Louisiana
19 Housing Finance Agency. The application shall identify the project and its
20 location and include evidence that the project is a qualified project as defined
21 in this Section. The Louisiana Housing Finance Agency may request any
22 information from an applicant necessary to enable it to make tax credit
23 allocations according to the guidelines set forth in Subsection C of this Section.

24 (2) The Louisiana Housing Finance Agency's approval of an applicant
25 as a designated project shall be in writing and shall include a statement of the
26 maximum credit allowable to the applicant. A copy of this approval shall be
27 transmitted to the executive director of the Department of Revenue, who shall
28 apply the tax credit to the tax liability of the applicant.

29 E. (1) For purposes of implementing this program and assessing the

1 property for ad valorem taxation under this Section, neither the tax credits nor
2 financing generated by tax credits shall be considered as income to the property,
3 and only the actual rental income from rent-restricted units in a state housing
4 tax credit development shall be recognized by an assessor. In considering or
5 using the market or cost approaches under this Section, neither the costs paid
6 for by tax credits nor the costs paid for by additional financing proceeds
7 received because the property is participating in the state or federal housing tax
8 credit program shall be included in the valuation.

9 (2) For the further purpose of implementing this program in Louisiana
10 and in assessing the property for ad valorem taxation under this Section, any
11 extended low income housing agreement and all amendments and supplements
12 thereto which are recorded and filed in the official public records of the parish
13 where the property is located shall be deemed a land use regulation during the
14 term of any such agreement, amendment, or supplement.

15 F. The agency is authorized to expend fees received in conjunction with
16 the allocation of state housing tax credits only for the purpose of administration
17 of the program, including private legal services which relate to interpretation
18 of Section 42 of the Internal Revenue Code.

19 G. Any excess of the credit allowed in a taxable period over income tax
20 liability for that taxable period against which the credit can be applied shall
21 constitute an overpayment, as defined in R.S. 47:1621(A), and the secretary
22 shall make a refund of such overpayment from the current collections of the
23 taxes imposed by Chapter 1 of Subtitle II of this Title, as amended. The right
24 to a refund of any such overpayment shall not be subject to the requirements
25 of R.S. 47:1621(B).

26 Section 2. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Angela Lockett De Jean.

DIGEST

Proposed law creates the State Housing Tax Credit Program ("SHTCP") for the purposes of stimulating creative private sector initiatives to increase the supply of affordable housing in urban and rural areas to provide associated commercial facilities associated with such housing facilities.

Proposed law grants an income tax credit for these projects that the LHFA determines are qualified projects, being those projects receiving reservations and/or allocations of federal low income housing tax credits, including prior approval of federal low income housing tax credits for Gulf Opportunity Zone Act of 2005 and calendar year 2007-2008.

Proposed law provides that those qualified projects in proposed law shall be considered designated projects under proposed law and eligible for the housing tax credit. The LHFA shall establish procedures necessary for proper allocation and distribution of state housing tax credits, including the establishment of criteria for any single-family or commercial component of a project, and may exercise all powers necessary to administer the allocation of such credits.

Proposed law provides that the board of directors of the LHFA shall administer the allocation procedures and determine allocations on behalf of the agency.

Proposed law requires the LHFA to prepare an annual plan, which must be approved by the governor, containing general guidelines for the allocation and distribution of credits to designated projects.

Proposed law requires the LHFA to adopt allocation procedures that will ensure the maximum use of available tax credits in order to encourage development of low-income housing and associated mixed-use projects in urban areas, taking into consideration the timeliness of the application, the location of the proposed project, the relative need in the area of revitalization and low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

Proposed law provides that a taxpayer who wishes to participate in the SHTCP must submit an application for tax credit to the LHFA. The application shall identify the project and its location and include evidence that the project is a qualified project as defined in proposed law.

Proposed law provides that the LHFA may request any information from an applicant necessary to enable it to make tax credit allocations according to the guidelines set forth in proposed law.

Proposed law provides that the LHFA approval of an applicant as a designated project must be in writing and must include a statement of the maximum credit allowable to the applicant. A copy of this approval shall be transmitted to the executive director of the Department of Revenue, who shall apply the tax credit to the tax liability of the applicant.

Proposed law provides that for purposes of implementing the SHTCP and assessing the property for ad valorem taxation under proposed law, neither the tax credits nor financing generated by tax credits shall be considered as income to the property, and the actual rental income from rent-restricted units in a state housing tax credit development shall be

recognized by the property appraiser.

Proposed law provides that in considering or using the market or cost approaches under proposed law, neither the costs paid for by tax credits nor the costs paid for by additional financing proceeds received because the property is participating in the program shall be included in the valuation.

Proposed law provides that for the further purpose of implementing this program in Louisiana and in assessing the property for ad valorem taxation under proposed law, any extended low income housing agreement and all amendments and supplements thereto which are recorded and filed in the official public records of the parish where the property is located shall be deemed a land use regulation during the term of any such agreement, amendment, or supplement.

Proposed law provides that the LHFA is authorized to expend fees received in conjunction with the allocation of state housing tax credits only for the purpose of administration of the program, including private legal services which relate to interpretation of Section 42 of the IRC.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 47:2323(C), adds R.S. 47:2323(D) and 6035)