2017 SENATE BILL 706


AN ACT to amend 76.67 (2); and to create 71.07 (8b), 71.10 (4) (cs), 71.28 (8b), 71.30 (3) (cs), 71.47 (8b), 71.49 (1) (cs), 76.639 and 234.45 of the statutes; relating to: an income and franchise tax credit for the development of low-income housing.

Analysis by the Legislative Reference Bureau

This bill creates a state tax credit program administered by the Wisconsin Housing and Economic Development Authority that is similar to a federal low-income housing tax credit program also administered by WHEDA. Under the state program, WHEDA may certify a person to claim a nonrefundable income and franchise tax credit if all of the following conditions are satisfied:

1. The person has an ownership interest in a qualified development. Under the bill, a “qualified development” is a low-income housing project for purposes of the federal low-income housing tax credit program, located in Wisconsin, and financed with tax-exempt bonds.
2. The tax credit is necessary for the financial feasibility of the qualified development.
3. The qualified development is the subject of a recorded restrictive covenant requiring that for at least 15 years, among other things, the development must be maintained and operated as a qualified development.
4. The tax credit certification is issued in accordance with a qualified allocation plan WHEDA is required to establish under the federal low-income housing tax credit program.
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Under the bill, WHEDA must give preference to qualified developments located in a city, village, or town of fewer than 150,000. The bill also caps at $42,000,000 the total amount of tax credits WHEDA may issue under the state program in a calendar year. However, the bill raises that cap for each calendar year by an amount equal to the total amount of all unallocated state tax credits from previous calendar years and the total amount of all previously allocated state tax credits that have been revoked or cancelled or otherwise recovered by WHEDA.

The bill also requires that WHEDA submit an annual report to the legislature concerning the progress of the program.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.07 (8b) of the statutes is created to read:

71.07 (8b) LOW-INCOME HOUSING CREDIT. (a) Definitions. In this subsection:

1. “Allocation certificate” means a statement issued by the authority certifying that a qualified development is eligible for a credit under this subsection and specifying the amount of the credit that the owners of the qualified development may claim.

2. “Authority” means the Wisconsin Housing and Economic Development Authority.

3. “Claimant” means a person who has an ownership interest in a qualified development and who files a claim under this subsection.

4. “Compliance period” means the 15-year period beginning with the first taxable year of the credit period.

5. “Credit period” means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this subdivision, if a qualified development consists of more than one building, the
qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

6. “Qualified basis” means the qualified basis determined under section 42 (c) (1) of the Internal Revenue Code.

7. “Qualified development” means a qualified low-income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.

(b) Filing claims. Subject to the limitations provided in this subsection and in s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim as a credit against the taxes imposed under s. 71.02, up to the amount of the tax, the amount allocated to the claimant by the authority under s. 234.45 for each taxable year within the credit period.

(c) Limitations. 1. No person may claim the credit under par. (b) unless the claimant includes with the claimant’s return a copy of the allocation certificate issued to the qualified development.

2. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection. The partners of a partnership, members of a limited liability company, or shareholders in a tax-option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, limited liability company, or tax-option corporation. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit that may be claimed by each partner, member, or shareholder and shall provide that information to the partner, member, or shareholder. For shareholders of a tax-option corporation, the credit may be allocated in proportion to the ownership interest of
each shareholder. Credits computed by a partnership or limited liability company
may be claimed in proportion to the ownership interests of the partners or members
or allocated to partners or members as provided in a written agreement among the
partners or members that is entered into no later than the last day of the taxable year
of the partnership or limited liability company, for which the credit is claimed. Any
partner or member who claims the credit as allocated by a written agreement shall
provide a copy of the agreement with the tax return on which the credit is claimed. A person claiming the credit as provided under this subdivision is solely responsible
for any tax liability arising from a dispute with the department of revenue related
to claiming the credit.

(d) **Recapture.** 1. As of the last day of any taxable year during the compliance
period, if the amount of the qualified basis of a qualified development with respect
to a claimant is less than the amount of the qualified basis as of the last day of the
immediately preceding taxable year, the amount of the claimant’s tax liability under
this subchapter shall be increased by the recapture amount determined by using the
method under section 42 (j) of the Internal Revenue Code.

2. In the event that the recapture of any credit is required in any taxable year,
the taxpayer shall include the recaptured proportion of the credit on the return
submitted for the taxable year in which the recapture event is identified.

(e) **Administration.** Section 71.28 (4) (e) to (h), as it applies to the credit under
s. 71.28 (4), applies to the credit under this subsection.

**SECTION 2.** 71.10 (4) (cs) of the statutes is created to read:

71.10 (4) (cs) Low-income housing credit under s. 71.07 (8b).

**SECTION 3.** 71.28 (8b) of the statutes is created to read:

71.28 (8b) LOW-INCOME HOUSING CREDIT. (a) **Definitions.** In this subsection:
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1. “Allocation certificate” means a statement issued by the authority certifying that a qualified development is eligible for a credit under this subsection and specifying the amount of the credit that the owners of the qualified development may claim.

2. “Authority” means the Wisconsin Housing and Economic Development Authority.

3. “Claimant” means a person who has an ownership interest in a qualified development and who files a claim under this subsection.

4. “Compliance period” means the 15-year period beginning with the first taxable year of the credit period.

5. “Credit period” means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this subdivision, if a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

6. “Qualified basis” means the qualified basis determined under section 42 (c) (1) of the Internal Revenue Code.

7. “Qualified development” means a qualified low-income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.

(b) Filing claims. Subject to the limitations provided in this subsection and in s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim as a credit against the taxes imposed under s. 71.23, up to the amount of the tax, the
amount allocated to the claimant by the authority under s. 234.45 for each taxable
year within the credit period.

(c) Limitations. 1. No person may claim the credit under par. (b) unless the
claimant includes with the claimant’s return a copy of the allocation certificate
issued to the qualified development.

2. A partnership, limited liability company, or tax-option corporation may not
claim the credit under this subsection. The partners of a partnership, members of
a limited liability company, or shareholders in a tax-option corporation may claim
the credit under this subsection based on eligible costs incurred by the partnership,
limited liability company, or tax-option corporation. The partnership, limited
liability company, or tax-option corporation shall calculate the amount of the credit
that may be claimed by each partner, member, or shareholder and shall provide that
information to the partner, member, or shareholder. For shareholders of a tax-option
corporation, the credit may be allocated in proportion to the ownership interest of
each shareholder. Credits computed by a partnership or limited liability company
may be claimed in proportion to the ownership interests of the partners or members
or allocated to partners or members as provided in a written agreement among the
partners or members that is entered into no later than the last day of the taxable year
of the partnership or limited liability company, for which the credit is claimed. Any
partner or member who claims the credit as allocated by a written agreement shall
provide a copy of the agreement with the tax return on which the credit is claimed.
A person claiming the credit as provided under this subdivision is solely responsible
for any tax liability arising from a dispute with the department of revenue related
to claiming the credit.
(d) Recapture. 1. As of the last day of any taxable year during the compliance period, if the amount of the qualified basis of a qualified development with respect to a claimant is less than the amount of the qualified basis as of the last day of the immediately preceding taxable year, the amount of the claimant’s tax liability under this subchapter shall be increased by the recapture amount determined by using the method under section 42 (j) of the Internal Revenue Code.

2. In the event that the recapture of any credit is required in any taxable year, the taxpayer shall include the recaptured proportion of the credit on the return submitted for the taxable year in which the recapture event is identified.

(e) Administration. Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

SECTION 4. 71.30 (3) (cs) of the statutes is created to read:

71.30 (3) (cs) Low-income housing credit under s. 71.28 (8b).

SECTION 5. 71.47 (8b) of the statutes is created to read:

71.47 (8b) LOW-INCOME HOUSING CREDIT. (a) Definitions. In this subsection:

1. “Allocation certificate” means a statement issued by the authority certifying that a qualified development is eligible for a credit under this subsection and specifying the amount of the credit that the owners of the qualified development may claim.

2. “Authority” means the Wisconsin Housing and Economic Development Authority.

3. “Claimant” means a person who has an ownership interest in a qualified development and who files a claim under this subsection.

4. “Compliance period” means the 15-year period beginning with the first taxable year of the credit period.
5. “Credit period” means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this subdivision, if a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

6. “Qualified basis” means the qualified basis determined under section 42 (c) (1) of the Internal Revenue Code.

7. “Qualified development” means a qualified low-income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.

(b) Filing claims. Subject to the limitations provided in this subsection and in s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the tax, the amount allocated to the claimant by the authority under s. 234.45 for each taxable year within the credit period.

(c) Limitations. 1. No person may claim the credit under par. (b) unless the claimant includes with the claimant’s return a copy of the allocation certificate issued to the qualified development.

2. A partnership, limited liability company, or tax-option corporation may not claim the credit under this subsection. The partners of a partnership, members of a limited liability company, or shareholders in a tax-option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, limited liability company, or tax-option corporation. The partnership, limited liability company, or tax-option corporation shall calculate the amount of the credit
that may be claimed by each partner, member, or shareholder and shall provide that
information to the partner, member, or shareholder. For shareholders of a tax-option
corporation, the credit may be allocated in proportion to the ownership interest of
each shareholder. Credits computed by a partnership or limited liability company
may be claimed in proportion to the ownership interests of the partners or members
or allocated to partners or members as provided in a written agreement among the
partners or members that is entered into no later than the last day of the taxable year
of the partnership or limited liability company, for which the credit is claimed. Any
partner or member who claims the credit as allocated by a written agreement shall
provide a copy of the agreement with the tax return on which the credit is claimed.
A person claiming the credit as provided under this subdivision is solely responsible
for any tax liability arising from a dispute with the department of revenue related
to claiming the credit.

(d) **Recapture.** 1. As of the last day of any taxable year during the compliance
period, if the amount of the qualified basis of a qualified development with respect
to a claimant is less than the amount of the qualified basis as of the last day of the
immediately preceding taxable year, the amount of the claimant’s tax liability under
this subchapter shall be increased by the recapture amount determined by using the
method under section 42 (j) of the Internal Revenue Code.

2. In the event that the recapture of any credit is required in any taxable year,
the taxpayer shall include the recaptured proportion of the credit on the return
submitted for the taxable year in which the recapture event is identified.

(e) **Administration.** Section 71.28 (4) (e) to (h), as it applies to the credit under
s. 71.28 (4), applies to the credit under this subsection.

**SECTION 6.** 71.49 (1) (cs) of the statutes is created to read:
71.49 (1) (cs) Low-income housing credit under s. 71.47 (8b).

SECTION 7. 76.639 of the statutes is created to read:

76.639 Low-income housing credit.  (1) DEFINITIONS. In this section:

(a) “Allocation certificate” means a statement issued by the authority certifying that a qualified development is eligible for a credit under this subsection and specifying the amount of the credit that the owners of the qualified development may claim.

(b) “Authority” means the Wisconsin Housing and Economic Development Authority.

(c) “Claimant” means an insurer who has an ownership interest in a qualified development and who files a claim under this section.

(d) “Compliance period” means the 15-year period beginning with the first taxable year of the credit period.

(e) “Credit period” means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this paragraph, if a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

(f) “Qualified basis” means the qualified basis determined under section 42 (c) (1) of the Internal Revenue Code.

(g) “Qualified development” means a qualified low-income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.
(2) Filing claims. Subject to the limitations provided in this section and in s. 234.45, for taxable years beginning after December 31, 2017, a claimant may claim as a credit against the fees imposed under s. 76.60, 76.63, 76.65, 76.66, or 76.67 the amount allocated to the claimant by the authority under s. 234.45 for each taxable year within the credit period.

(3) Limitations. No insurer may claim the credit under sub. (2) unless the claimant includes with the claimant’s return a copy of the allocation certificate issued to the qualified development.

(4) Recapture. (a) As of the last day of any taxable year during the compliance period, if the amount of the qualified basis of a qualified development with respect to a claimant is less than the amount of the qualified basis as of the last day of the immediately preceding taxable year, the amount of the claimant’s tax liability under s. 76.60, 76.63, 76.65, 76.66, or 76.67 shall be increased by the recapture amount determined by using the method under section 42 (j) of the Internal Revenue Code.

(b) In the event that the recapture of any credit is required in any taxable year, the taxpayer shall include the recaptured proportion of the credit on the return submitted for the taxable year in which the recapture event is identified.

(5) Carry-forward. If the credit under sub. (2) is not entirely offset against the fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance may be carried forward and credited against those fees for the following 15 years to the extent that it is not offset by those fees otherwise due in all the years between the year in which the expense was made and the year in which the carry-forward credit is claimed.

Section 8. 76.67 (2) of the statutes is amended to read:
76.67 (2) If any domestic insurer is licensed to transact insurance business in another state, this state may not require similar insurers domiciled in that other state to pay taxes greater in the aggregate than the aggregate amount of taxes that a domestic insurer is required to pay to that other state for the same year less the credits under ss. 76.635, 76.636, 76.637, 76.638, and 76.655, except that the amount imposed shall not be less than the total of the amounts due under ss. 76.65 (2) and 601.93 and, if the insurer is subject to s. 76.60, 0.375 percent of its gross premiums, as calculated under s. 76.62, less offsets allowed under s. 646.51 (7) or under ss. 76.635, 76.636, 76.637, 76.638, 76.639, and 76.655 against that total, and except that the amount imposed shall not be less than the amount due under s. 601.93.

SECTION 9. 234.45 of the statutes is created to read:

234.45 Low-income housing tax credits. (1) DEFINITIONS. In this section:

(a) “Allocation certificate” means a statement issued by the authority certifying that a qualified development is eligible for a state tax credit and specifying the amount of the credit that the owners of the qualified development may claim.

(b) “Compliance period” means the 15-year period beginning with the first taxable year of the credit period.

(c) “Credit period” means the period of 6 taxable years beginning with the taxable year in which a qualified development is placed in service. For purposes of this paragraph, if a qualified development consists of more than one building, the qualified development is placed in service in the taxable year in which the last building of the qualified development is placed in service.

(d) “Qualified allocation plan” means the qualified allocation plan adopted by the authority pursuant to section 42 (m) of the Internal Revenue Code.
(e) “Qualified development” means a qualified low-income housing project under section 42 (g) of the Internal Revenue Code that is financed with tax-exempt bonds, pursuant to section 42 (i) (2) of the Internal Revenue Code, and located in this state.

(f) “State tax credit” means a tax credit under s. 71.07 (8b), 71.28 (8b), 71.47 (8b), or 76.639.

(2) Establishment of Program. The authority shall establish a program to certify persons to claim state tax credits under this section.

(3) Certification. The authority may certify a person to claim a state tax credit in an amount determined by the authority by issuing the person an allocation certificate for the qualified development that is eligible for the state tax credit. The authority may issue an allocation certificate under this subsection only if all of the following conditions are satisfied:

(a) The allocation certificate is issued to a person who has an ownership interest in the qualified development.

(b) The state tax credit is necessary for the financial feasibility of the qualified development.

(c) The qualified development is the subject of a recorded restrictive covenant requiring that, for the compliance period or for a longer period agreed to by the authority and the owner of the qualified development, the development shall be maintained and operated as a qualified development and shall be in compliance with Title VIII of the federal Civil Rights Act of 1968, as amended.

(d) The allocation certificate is issued in accordance with the authority’s qualified allocation plan.
(4) **Allocation Limits.** The aggregate amount of all state tax credits the authority certifies persons to claim in allocation certificates issued under sub. (3) in the same calendar year may not exceed $42,000,000, plus the total amount of all unallocated state tax credits from previous calendar years and plus the total amount of all previously allocated state tax credits that have been revoked or cancelled or otherwise recovered by the authority.

(5) **Preference for Smaller Municipalities.** In issuing allocation certificates under sub. (3), the authority shall give preference to qualified developments located in a city, village, or town with a population of fewer than 150,000.

(6) **Report.** No later than December 31 of each year, the authority shall submit a report to the legislature under s. 13.172 (2) that includes all of the following:

(a) A statement of the number of qualified developments for which the authority issued allocation certificates that year.

(b) A description of each qualified development for which the authority issued an allocation certificate that year, including the geographic location of the development, the household type and any specific demographic information available concerning the residents intended to be served by the development, the income levels of residents intended to be served by the development, and the rents or set-asides authorized for each development.

(c) An analysis of housing market and demographic information that shows how the qualified developments for which the authority has issued allocation certificates at any time are addressing the need for affordable housing within the communities those developments are intended to serve and an analysis of any remaining disparities in the affordability of housing within those communities.
(7) POLICIES AND PROCEDURES. The authority, in consultation with the department of revenue, shall establish policies and procedures to administer this section.

(END)