

SENATE BILL No. 123

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-35.

Synopsis: Housing tax credits. Provides an affordable and workforce housing state tax credit against state tax liability to a taxpayer for each taxable year in the state tax credit period of a qualified project in an aggregate amount that does not exceed the product of a percentage between 40% and 100% and the amount of the taxpayer's aggregate federal tax credit for the qualified project. Provides that an eligible applicant must apply to the Indiana housing and community development authority for an award of an affordable and workforce housing state tax credit. Provides that a holder of an affordable and workforce housing state tax credit may transfer, sell, or assign all or part of the holder's right to claim the state tax credit for a taxable year.

Effective: July 1, 2020.

Holdman

January 13, 2020, read first time and referred to Committee on Appropriations.



Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE BILL No. 123

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-35 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]:

4 **Chapter 35. Affordable and Workforce Housing Tax Credit**

5 **Sec. 1. The state tax credit provided by this chapter applies only**
6 **to taxable years beginning on or after January 1, 2022. However,**
7 **beginning July 1, 2021:**

8 (1) **eligible applicants may submit applications to the**
9 **authority for state tax credits for qualified projects; and**

10 (2) **the authority may evaluate applications and issue**
11 **eligibility statements;**

12 **under section 7 of this chapter.**

13 **Sec. 2. The following definitions apply throughout this chapter:**

14 (1) **"Authority" refers to the Indiana housing and community**
15 **development authority created by IC 5-20-1-3.**

16 (2) **"Eligibility statement" refers to the statement issued by**
17 **the authority to an eligible applicant under section 7 of this**



- 1 chapter.
 2 (3) "Eligible applicant" means a taxpayer who is:
 3 (A) an owner of a qualified project; or
 4 (B) a shareholder, member, or partner of an owner of a
 5 qualified project that is designated by the owner in the
 6 manner prescribed by the authority.
 7 (4) "Federal tax credit" means a federal low income housing
 8 credit under Section 42 of the Internal Revenue Code that is
 9 a thirty percent (30%) present value credit. The term does not
 10 include a seventy percent (70%) present value credit under
 11 Section 42 of the Internal Revenue Code for certain new
 12 buildings.
 13 (5) "Holder of a state tax credit" for a taxable year in a
 14 qualified project's state tax credit period means:
 15 (A) the eligible applicant for the qualified project;
 16 (B) a shareholder, member, or partner of the owner of the
 17 qualified project; or
 18 (C) a successor, assignee, or transferee of the eligible
 19 applicant under section 6 of this chapter;
 20 that has a right to claim all or part of the tax credit for the
 21 taxable year.
 22 (6) "Qualified basis" of a qualified project has the meaning
 23 set forth in Section 42 of the Internal Revenue Code.
 24 (7) "Qualified project" means a qualified low income building
 25 (as defined in Section 42(c) of the Internal Revenue Code):
 26 (A) that is located in Indiana;
 27 (B) for which a federal affordable housing tax credit was
 28 awarded using a thirty percent (30%) present value of the
 29 qualified basis of the building; and
 30 (C) that is financed by tax exempt bonds that are subject
 31 to the private activity bond volume cap (under Section
 32 42(h)(4) of the Internal Revenue Code).
 33 (8) "State tax credit" means the tax credit provided by this
 34 chapter.
 35 (9) "State tax credit period" for a qualified project means the
 36 period of five (5) taxable years beginning with the taxable
 37 year in which any amount of the federal tax credit for the
 38 qualified project is first claimed by a taxpayer.
 39 (10) "State tax liability" means a taxpayer's total tax liability
 40 incurred under:
 41 (A) IC 6-3-1 through IC 6-3-7 (the adjusted gross income
 42 tax);



- 1 **(B) IC 6-5.5 (the financial institutions tax);**
 2 **(C) IC 27-1-18-2 (the insurance premiums tax); and**
 3 **(D) IC 27-1-20-12 (the insurance premiums retaliatory**
 4 **tax);**
 5 **as computed after the application of the credits that under**
 6 **IC 6-3.1-1-2 are to be applied before the credit provided by**
 7 **this chapter.**
 8 **(11) "Tax credit application" means an application submitted**
 9 **by an eligible applicant to the authority under section 7 of this**
 10 **chapter.**
 11 **(12) "Taxpayer" means an individual, a corporation, an S**
 12 **corporation, a partnership, a limited partnership, a limited**
 13 **liability partnership, a limited liability company, or a joint**
 14 **venture.**
 15 **Sec. 3. (a) Except as otherwise provided in this chapter, for each**
 16 **taxable year in the state tax credit period of a qualified project, the**
 17 **holder of a state tax credit awarded under this chapter for the**
 18 **qualified project is entitled to a credit against the holder's state tax**
 19 **liability for the taxable year in an amount equal to:**
 20 **(1) the percentage of the state tax credit for the taxable year**
 21 **that the holder retains at the end of the last day of the taxable**
 22 **year, as determined under subsection (c); multiplied by**
 23 **(2) the amount of the state tax credit for the qualified project**
 24 **for the taxable year, as determined under subsections (d) and**
 25 **(e).**
 26 **(b) At the time an eligibility statement is issued to an eligible**
 27 **applicant, the eligible applicant is considered to have acquired one**
 28 **hundred percent (100%) of the state tax credit for each taxable**
 29 **year in the state tax credit period of the qualified project.**
 30 **(c) The percentage of a state tax credit for a taxable year that a**
 31 **holder retains at the end of the last day of a taxable year under**
 32 **subsection (a)(1) is equal to:**
 33 **(1) the sum of the percentages of the state tax credit for the**
 34 **taxable year that the holder acquires before the end of the last**
 35 **day of the taxable year; minus**
 36 **(2) the sum of the percentages of the state tax credit for the**
 37 **taxable year that the holder transfers before the end of the**
 38 **last day of the taxable year.**
 39 **(d) The amount of a state tax credit for a taxable year in the**
 40 **state tax credit period of a qualified project under subsection (a)(2)**
 41 **is equal to:**
 42 **(1) a factor equal to:**



- 1 (A) one (1); divided by
 2 (B) the number of taxable years in the state tax credit
 3 period for the qualified project; multiplied by
 4 (2) the lesser of:
 5 (A) the amount of the total federal credit allowed for the
 6 qualified project, as shown on Internal Revenue Service
 7 Form 8609, Line 1(b) for the qualified project; or
 8 (B) the maximum aggregate amount of state tax credits
 9 awarded for the qualified project, as stated in the
 10 eligibility statement issued under section 7 of this chapter.
 11 (e) The department shall determine the amounts of the state tax
 12 credits specified under subsection (d) for each taxable year in the
 13 state tax credit period of each qualified project as those amounts
 14 are able to be computed and promptly publish the amounts on the
 15 department's Internet web site to assist holders in claiming the
 16 state tax credit provided by this chapter.
 17 **Sec. 4. (a) If a holder's state tax credit exceeds the holder's state**
 18 **tax liability for the taxable year, the excess may be carried forward**
 19 **for up to nine (9) consecutive taxable years immediately following**
 20 **the first taxable year of the holder's state tax credit period and**
 21 **may be used to reduce the holder's state tax liability during those**
 22 **taxable years. Only the unused part of a state tax credit may be**
 23 **carried forward and used in a subsequent taxable year.**
 24 (b) The holder of a state tax credit is not entitled to a carryback
 25 or refund of any unused credit.
 26 **Sec. 5. (a) If a pass through entity is entitled to a state tax credit**
 27 **but does not have state tax liability against which the state tax**
 28 **credit may be applied, the pass through entity may allocate or**
 29 **otherwise transfer the state tax credit among the shareholders,**
 30 **members, or partners of the pass through entity in any manner**
 31 **agreed to by the shareholders, members, or partners, regardless of**
 32 **how the federal tax credit for the qualified project is allocated or**
 33 **transferred or whether the allocation or transfer of the state tax**
 34 **credit under the agreement has substantial economic effect under**
 35 **Section 704(b) of the Internal Revenue Code. A pass through entity**
 36 **or its designee shall certify to the department the amount of the**
 37 **state tax credit that is allocated or transferred to each shareholder,**
 38 **member, or partner of the pass through entity for the taxable year,**
 39 **if any, in the manner prescribed by the department.**
 40 (b) The credit provided under subsection (a) is in addition to a
 41 state tax credit to which a shareholder, member, or partner of a
 42 pass through entity is otherwise entitled under this chapter.



1 **Sec. 6. (a) A holder of a state tax credit may transfer, sell, or**
 2 **assign all or part of a state tax credit for a taxable year in the state**
 3 **tax credit period of the associated qualified project if the holder of**
 4 **the state tax credit complies with this section.**

5 **(b) A holder shall furnish the following to the transferee,**
 6 **purchaser, or assignee:**

7 **(1) A copy of the eligibility statement for the qualified project.**

8 **(2) A declaration, on a form prescribed by the department,**
 9 **that states:**

10 **(A) the percentage of the state tax credit for the taxable**
 11 **year that was held by the transferor before the transfer;**

12 **(B) the percentage of the state tax credit for the taxable**
 13 **year that will be held by the transferor after the transfer;**

14 **(C) the percentage of the state tax credit for the taxable**
 15 **year that will be held by the transferee after the transfer;**

16 **and**

17 **(D) any other information required by the department.**

18 **The percentage specified in clause (A) must equal the sum of**
 19 **the percentages specified in clauses (B) and (C).**

20 **(3) Copies of other documents in the possession of the**
 21 **transferor that relate to the transferor's right to claim the**
 22 **state tax credit provided by this chapter, if any.**

23 **(c) A transferor of all or part of a state tax credit for a taxable**
 24 **year under this section shall report the transaction to the**
 25 **department in the manner prescribed by the department.**

26 **Sec. 7. (a) An eligible applicant who wishes to obtain the state**
 27 **tax credit provided by this chapter for a qualified project must**
 28 **submit an application to the authority after June 30, 2021, and**
 29 **before January 1, 2026, in the manner prescribed by the authority.**

30 **(b) An application submitted under subsection (a) must include:**

31 **(1) the name and address of the qualified project;**

32 **(2) the name and address of the owner of the qualified**
 33 **project; and**

34 **(3) any other information required by the authority.**

35 **(c) Subject to section 8 of this chapter, the authority may**
 36 **approve a tax credit application if:**

37 **(1) the applicant is an eligible applicant;**

38 **(2) the project identified in the application is a qualified**
 39 **project; and**

40 **(3) the tax credit application meets any other requirements**
 41 **for receipt of state tax credits established by the authority.**

42 **(d) If the authority approves a tax credit application for a**



1 qualified project, for each taxable year in the tax credit period the
 2 authority may approve a maximum amount of state tax credits.
 3 The maximum aggregate amount of state tax credits awarded by
 4 the authority for the state tax credit period of a qualified project
 5 is an amount that is the product of:

- 6 (1) a percentage determined by the authority, which must be:
 7 (A) greater than or equal to forty percent (40%); and
 8 (B) less than or equal to one hundred percent (100%);
 9 multiplied by

10 (2) the anticipated aggregate federal tax credits specified in a
 11 letter issued by the authority for the qualified project under
 12 Section 42(m) of the Internal Revenue Code.

13 (e) If the authority approves a tax credit application for a
 14 qualified project, the authority shall issue an eligibility statement
 15 to the eligible applicant. The eligibility statement must specify at
 16 least the following:

- 17 (1) A unique identification code for the eligibility statement,
 18 determined by the authority.
 19 (2) The name of the qualified project.
 20 (3) For each taxable year in the state tax credit period of the
 21 qualified project, the maximum amount of state tax credit
 22 that the authority is awarding to the eligible applicant for the
 23 qualified project.

24 (f) The authority shall transmit a copy of each eligibility
 25 statement issued under subsection (e) to the department.

26 Sec. 8. (a) For each state fiscal year beginning after June 30,
 27 2021, and before July 1, 2026, the aggregate amount of state tax
 28 credits awarded by the authority under this chapter may not
 29 exceed thirty million dollars (\$30,000,000). For purposes of
 30 calculating the aggregate state tax credit limit for a state fiscal
 31 year, the amounts awarded by the authority are considered to be
 32 awarded in the year the award is made to the state tax credit
 33 recipient by the authority, notwithstanding the fact that the
 34 awarded state tax credit is to be claimed over the state tax credit
 35 period.

36 (b) To the extent that the tax credit applications requesting state
 37 tax credits exceed the amount of available state tax credits in a
 38 year, or the authority reasonably anticipates that the requests will
 39 exceed the state fiscal year limitation established in subsection (a),
 40 the authority may allocate the state tax credits in a manner that
 41 furthers the mission and purpose of the authority and otherwise
 42 promotes the establishment of qualified projects.



- 1 **Sec. 9. To receive the state credit provided by this chapter, a**
2 **holder of a state tax credit must claim the credit on the holder's**
3 **annual state tax return in the manner prescribed by the**
4 **department. The holder of the state tax credit shall submit to the**
5 **department all information that the department determines is**
6 **necessary for the calculation of the state tax credit.**
- 7 **Sec. 10. The department or the authority, or both, may adopt**
8 **rules to implement this chapter.**
- 9 **Sec. 11. This chapter is subject to review under IC 2-5-3.2-1 to**
10 **evaluate the effectiveness of the state tax credit.**

