

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1177

Introduced by

Finance and Taxation Committee

(At the request of the Housing Finance Agency)

A BILL for an Act to create and enact four new sections to chapter 54-17, a new subsection to section 57-35.3-05, a new section to chapter 57-38, and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to a housing tax credit program for difficult-to-develop areas in the state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Four new sections to chapter 54-17 of the North Dakota Century Code are created and enacted as follows:

Housing tax credit program for difficult-to-develop areas. Acting in its capacity as the state housing finance agency, the industrial commission is authorized to establish the housing tax credit program for difficult-to-develop areas within the state. The agency may cooperate with the tax commissioner in the development and administration of this program.

Definitions. As used in section 1 of this Act:

1. "Agency" means the industrial commission of North Dakota acting as the state housing finance agency.
2. "Difficult-to-develop area" means a city within the state with a population of ten thousand or fewer persons which lacks an adequate supply of low-income to moderate-income housing or has an unmet housing need or housing shortage due to energy development, population growth, or deteriorating housing stock. For purposes of this subsection, a city includes any area located within extraterritorial zoning authority of the city under section 40-47-01.1.
3. "Eligible housing project" means a housing project in a difficult-to-develop area that includes new construction of single-family owner-occupied housing units or multifamily rental housing units, or substantial rehabilitation of any structures creating additional habitable housing units, which project must be approved by the

agency prior to any eligible investment. Any approval must be based, in part, on a determination by the agency that but for the tax credit assistance provided by this Act, the project would likely not be constructed.

4. "Eligible investment" means an investment or contribution of cash, buildings, land, or development or construction services approved by the agency. The amount of the eligible investment may not exceed twenty percent of the costs of constructing a single-family owner-occupied housing unit valued at no more than the greater of two hundred twenty-five thousand dollars or an amount equal to the acquisition cost area limits established by the agency from time to time for its home mortgage finance program; twenty percent of the costs of constructing a multifamily rental housing unit valued at no more than the greater of one hundred twenty-five thousand dollars or an amount established by the agency in its annual low-income housing tax credit program qualified allocation plan for its average qualified basis per square foot multiplied by the square footage of a multifamily unit; or fifty percent of the costs of rehabilitating a unit of single-family or multifamily housing or any other structure totaling at least forty thousand dollars per unit.
5. "Eligible investor" means a person as defined in section 57-38-01, an exempt organization as described in subsection 1 of section 57-38-09 subject to the tax described in subsection 2 of section 57-38-09, or a financial institution as defined in subsection 2 of section 57-35.3-01 making an eligible investment in an eligible project.
6. "Tax commissioner" means the state tax commissioner.

Investment voucher - Issuance.

1. The agency may issue an investment voucher to an eligible investor who has made an eligible investment in an eligible housing project. The maximum amount of an investment voucher for any eligible investor may not exceed fifty percent of the value of the eligible investment by the eligible investor, except that if at least fifty percent of the eligible project is to be owned or occupied by households having income of less than eighty percent of the area median income, the amount of the investment voucher may equal up to seventy-five percent of the value of the eligible investment.

2. The aggregate amount of investment vouchers that may be issued by the agency under this Act to all eligible investors is limited to two million dollars for each calendar year.
3. An investment voucher issued by the agency must be numbered for identification.
4. The agency may adopt guidelines for the approval, issuance, and administration of investment vouchers pursuant to this section.
5. An eligible investor may not be delinquent in payment of any state or local tax liability to be eligible for a tax benefit under this Act.
6. The agency must provide written notice to an eligible investor and to the tax commissioner of any adjustment to the amount of the investment voucher. The limitations in subsection 2 are not affected by an adjustment under this subsection if the adjustment occurs in a year subsequent to the calendar year in which the investment voucher was issued.

Eligible housing project completion notice. The agency shall notify the tax commissioner of each eligible housing project approved by the agency and notify the tax commissioner of all investment vouchers issued pursuant to the housing tax credit program for difficult-to-develop areas within twenty days of the issuance of that voucher.

SECTION 2. A new subsection to section 57-35.3-05 of the North Dakota Century Code is created and enacted as follows:

There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount not to exceed the value of an investment voucher issued by the housing finance agency under sections 1 and 3 of this Act. The taxpayer shall claim the tax credit beginning with the taxable year in which the investment voucher is issued. The amount allowable as a credit under this section for any taxable year may not exceed five and seven-tenths percent of the tax before credits allowed under section 57-35.3-05.

SECTION 3. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Housing tax credit for difficult-to-develop areas.

1. A taxpayer is entitled to a credit against tax liability under section 57-38-29, 57-38-30, or 57-38-30.3 in an amount not to exceed the value of an investment

voucher issued by the housing finance agency under section 1 of this Act. The taxpayer shall claim the tax credit beginning with the taxable year in which the investment voucher is issued.

2. The credit allowed under this section for the taxable year may not exceed the liability for tax under this chapter. If the amount of the credit exceeds the tax liability, the unused credit amount may be carried forward for up to five taxable years.

3. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

4. If the amount of the investment voucher available to the taxpayer is adjusted by the housing finance agency, the housing finance agency shall report the adjusted investment voucher amount to the tax commissioner. The taxpayer shall file an amended return within ninety days of the date of the written notice required in section 1 of this Act for each taxable year in which the credit was claimed, reporting the additional tax due or claiming a refund as provided in section 57-38-38 or 57-38-40. The tax commissioner may audit the amended return and assess additional tax due or issue a refund even though other time periods for assessment and refund prescribed in this chapter have expired. If the taxpayer fails to file an amended return within ninety days from the credit adjustment date, the taxpayer is not entitled to interest under section 57-38-35.2.

SECTION 4. A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Housing tax credit for difficult-to-develop areas under section 3 of this Act.

SECTION 5. EFFECTIVE DATE. Section 1 of this Act is effective January 1, 2009. Sections 2, 3, and 4 of this Act are effective for taxable years beginning after December 31, 2008.