

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

HOUSE BILL NO. 1383
(Representatives Dorso, Clark)
(Senators Grindberg, G. Nelson)

AN ACT to provide for establishment and operation of the housing development fund and to provide a financial institutions tax credit for participation in the fund; to amend and reenact sections 57-35.3-09 and 57-35.3-10 of the North Dakota Century Code, relating to allocation of financial institutions' tax revenues; to provide a penalty; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Financial institution" means a financial institution as defined in section 57-35.3-01.
2. "Fund" means the housing development fund.
3. "Fund administrator" means a certified development corporation with a statewide focus which the small business administration has designated as a certified development corporation.
4. "Governing board" means the board of directors of the corporation or board of governors of the limited liability company established under section 2 of this Act.

SECTION 2. Establishment - Organization. Any financial institution or group of financial institutions may establish a corporation or a limited liability company to own and operate the housing development fund. Except as provided in this Act, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and a representative of the department of economic development and finance. The fund administrator shall maintain the fund as an account at the Bank of North Dakota. The governing board is responsible for adopting policies and procedures governing activities in connection with the fund. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

SECTION 3. Housing development fund use. The housing development fund established under section 2 of this Act may be used only for making participation loans in housing development projects in this state. The participation of the fund in a loan may not exceed the aggregate of loans from other sources and the investment of the project developer. A loan from the fund may not be made to a financial institution. The governing board shall establish the rate of interest and terms of repayment for a loan from the fund. Loans may be made from the fund for any housing project in the state, but the primary focus for loans from the fund must be to provide funding for multifamily housing projects in rural areas that are experiencing or expecting a shortage of housing as a result of economic development. For purposes of this section, "rural areas" means the area of the state not within the corporate limits of a city with a population of eight thousand or more.

SECTION 4. Loan administration. An application for a loan from the fund must contain the information prescribed by the governing board. Except as provided in this section, information contained in applications for loans from the fund is confidential. The fund administrator shall review each loan application; report to the governing board whether the applicant represents a housing project, whether the housing project is for multifamily housing, and whether the housing project is located in a rural area; and make a recommendation to the governing board on whether to approve the loan application.

SECTION 5. Audited financial statement - Report of fund operations. The governing board shall contract annually with a certified public accountant for performance of an audit and preparation of audited financial statements of the fund, prepared in accordance with generally accepted accounting principles, and a report containing an analysis of the impact of the fund on the state's economy, business and employment activity generated by loans from the fund, and the effects of that activity on state and local tax revenues. The governing board shall provide the financial statements and report to the governor and the legislative council. The governing board shall make copies available to the public upon request. The cost of the audit and preparation of financial statements and report must be paid from the fund.

SECTION 6. Financial institutions tax credit - Penalty. If the requirements of this Act are met, a financial institution is entitled to a credit against taxes due under section 57-35.3-03 as determined under this section.

1. A financial institution making or participating in a loan under this Act is entitled to a credit calculated for each calendar year the loan is in place. The amount of the credit is the difference between:
 - a. The participating financial institution's share of the interest earned on the loan during the calendar year; and
 - b. The participating financial institution's share of an amount of interest that would have been earned during the same period by applying an interest rate, calculated by adding three hundred basis points to a comparable treasury security rate at the date of the issuance of the loan.
2. The maximum credit allowed a financial institution for any calendar year is the amount of interest that would have been earned during the period by applying an interest rate of three hundred basis points. A credit may not be allowed if the interest earned exceeds the interest that would have been earned by applying the calculation in subdivision b of subsection 1.
3. The credit may not exceed the total amount of the financial institution's tax liability under chapter 57-35.3 and unused credit may not be carried forward.
4. Credits under this section for all financial institutions may not exceed an aggregate amount of seven hundred and fifty thousand dollars in a calendar year.
5. A financial institution claiming a credit under this section shall attach to its return a schedule identifying each county within this state within which are located housing development projects funded by loans for which credits are claimed by that financial institution. The schedule must identify the location of, and the dollar amount of credit attributable to, each project within each county.

SECTION 7. Loans limited by assets of financial institutions. The aggregate amount of all loans made by a financial institution under this Act or the aggregate amount of a financial institution's participation in loans made under this Act may not at any time exceed five percent of the financial institution's admitted assets or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.

SECTION 8. AMENDMENT. Section 57-35.3-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-35.3-09. Financial institution tax distribution fund - Continuing appropriation. The balance in the financial institution tax distribution fund on February first of 1999 and each subsequent year must be distributed in the following manner:

1. On or before February 1, 1999, the commissioner shall determine and certify to all county auditors:

- a. The total amount of tax certified to each county under chapters 57-35 and 57-35.1 in the years 1993 through 1997; and
 - b. The amount determined under subdivision a for each county as a percentage of the amount determined under subdivision a for all counties.
2. On or before February fifteenth of 1999 and each subsequent year, the commissioner shall determine and certify to the state treasurer an amount for payment by the state treasurer to each county treasurer equal to:
- a. The percentage for that county determined under subdivision b of subsection 1~~;~~, multiplied by
 - ~~b. The the balance in the financial institution tax distribution fund on February first of that year plus five-sevenths of the total amount of credits claimed and allowed in the state under section 6 of this Act for the taxable year for which the distribution is being made; minus~~
 - b. Five-sevenths of the total amount of credits claimed and allowed in that county under section 6 of this Act for the taxable year for which the distribution is being made. If the amount subtracted under this subdivision exceeds the county's share of fund distributions for the taxable year, any excess amount may be carried forward and deducted from distributions to the county for up to two taxable years.
3. On or before March first of 1999 and each subsequent year, the state treasurer shall pay to the treasurer of each county the amount determined for that county under subsection 2. The amounts necessary to make these payments are appropriated to the state treasurer as a standing and continuing appropriation for distribution under this subdivision.
4. On or before February 1, 1999, the treasurer of each county shall determine and certify to the state treasurer and to all affected political subdivisions of the county:
- a. The total amount of tax apportioned and distributed to the state, the county, and each political subdivision of the county under sections 57-35-13 and 57-35.1-06 in the years 1994 through 1998; and
 - b. The amount determined under subdivision a for each distributee as a percentage of the amount determined under subdivision a for all distributees.
5. On or before the tenth working day of March in 1999 and each subsequent year, the treasurer of each county shall determine and distribute to each distributee described in subsection 4 an amount equal to:
- a. The percentage for that distributee determined under subdivision b of subsection 4; multiplied by
 - b. The amount of the payment by the state to the county in that year under subsection 3.

SECTION 9. AMENDMENT. Section 57-35.3-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-35.3-10. Certification of estimated tax. On or before August 1, 1998, and each subsequent year, the commissioner shall provide a preliminary estimate of the distribution to be made to each county in the following year. The preliminary estimate must show the total amount of credits claimed and allowed in each county under section 6 of this Act for the taxable year and how those credits affect distributions. The preliminary estimate must identify the location of, and the dollar amount of credit attributable to, each project within each county. On or before November fifteenth of 1998 and each subsequent year, the commissioner shall determine the estimated amount of the distribution to be made to each county in the following year under section 57-35.3-09 and shall certify that amount to the county auditor.

SECTION 10. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first four taxable years beginning after December 31, 1998, and is thereafter ineffective.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1383.

House Vote: Yeas 82 Nays 14 Absent 2

Senate Vote: Yeas 32 Nays 14 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State