

Sixty-third
Legislative Assembly
of North Dakota

_____ BILL NO.

Introduced by

1 A BILL for an Act to amend and reenact subsection 3 of section 54-17-07.3 and
2 sections 54-17-40, 54-17-41, 57-35.3-05, and 57-38-01.32 of the North Dakota Century
3 Code, relating to a multifamily housing finance program by the North Dakota housing
4 finance agency and to a housing incentive fund and tax credits for contributions to the
5 fund; to provide an effective date; and to declare an emergency.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 3 of section 54-17-07.3 of the North
8 Dakota Century Code is amended and reenacted as follows:

9 3. Multifamily housing finance program. A program or programs to provide
10 financing directly or indirectly of construction, permanent, and combined
11 construction and permanent mortgage loans, including participations in
12 mortgage loans, for the acquisition, construction, refurbishing,
13 reconstruction, rehabilitation, or improvement of multifamily housing
14 facilities. As part of such a program, the industrial commission acting in its
15 capacity as a state housing finance agency may enter into a public-private
16 partnership with any interested private entity and accept any gift, grant, or
17 other type of financial aid or assistance, including a contribution to the
18 housing incentive fund, to provide financing for the construction or
19 rehabilitation of a multifamily housing facility in a developing community in
20 the state to address an unmet housing need or alleviate a housing
21 shortage. A private entity participating in such a program may reserve a
22 proportionate share of available units in the facility for occupancy by its
23 workforce based on its financial participation in the facility, in addition to

1 any units held for occupancy by persons or families of low or moderate
2 income.

3 **SECTION 2. AMENDMENT.** Section 54-17-40 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 **54-17-40. (~~Effective through June 30, 2013~~) Housing incentive fund -**
6 **Continuing appropriation.**

7 1. The housing incentive fund is created as a special revolving fund at the
8 Bank of North Dakota. The housing finance agency may direct
9 disbursements from the fund and a continuing appropriation from the fund
10 is provided for that purpose.

11 2. After a public hearing, the housing finance agency shall create an annual
12 allocation plan for the distribution of the fund. At least twenty-five percent
13 of the fund must be used to assist developing communities ~~with a~~
14 ~~population of not more than ten thousand individuals~~ to address an unmet
15 housing need or alleviate a housing shortage. ~~At least fifty percent A~~
16 portion of the fund as determined by the housing finance agency in the
17 annual allocation plan must be used to benefit ~~households with incomes at~~
18 ~~not more than fifty percent of the area median income~~ persons and
19 families of low or moderate income. The agency may collect a reasonable
20 administrative fee from the fund or from project developers, applicants or
21 grant recipients.

22 3. The housing finance agency shall adopt guidelines for the fund so as to
23 address unmet housing needs in this state. Assistance from the fund may
24 be used solely for:

25 a. New construction, rehabilitation, or acquisition of a multifamily
26 housing project;

27 b. Gap assistance, matching funds, and accessibility improvements;

1 c. Assistance that does not exceed the amount necessary to qualify
2 for a loan using underwriting standards acceptable for secondary
3 market financing or to make the project feasible; and

4 d. Rental assistance, emergency assistance, or targeted supportive
5 services designated to prevent homelessness.

6 4. Eligible recipients include units of local, state, and tribal government; local
7 and tribal housing authorities; community action agencies; regional
8 planning councils; and nonprofit organizations and for-profit developers of
9 multifamily housing. Individuals may not receive direct assistance from
10 the fund.

11 5. Except for subdivision d of subsection 3, assistance is subject to
12 repayment or recapture under the guidelines adopted by the housing
13 finance agency. Any assistance that is repaid or recaptured must be
14 deposited in the fund and is appropriated on a continuing basis for the
15 purposes of this section.

16 **SECTION 3. AMENDMENT.** Section 54-17-41 of the North Dakota Century
17 Code is amended and reenacted as follows:

18 **54-17-41. ~~(Effective through June 30, 2013)~~ Report.** Upon request, the
19 housing finance agency shall report to the industrial commission on the activities of the
20 housing incentive fund.

21 **SECTION 4. AMENDMENT.** Section 57-35.3-05 of the North Dakota Century
22 Code is amended and reenacted as follows:

23 **57-35.3-05. Credits.**

24 1. a. There is allowed a credit against the tax imposed by sections
25 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent
26 of the aggregate amount of charitable contributions made by the
27 taxpayer during the taxable year to nonprofit private institutions of

1 higher education located within the state or to the North Dakota
2 independent college fund. The amount allowable as a credit under
3 this subdivision for any taxable year may not exceed four and
4 six-tenths percent of the tax before credits allowed under this
5 section, or two thousand five hundred dollars, whichever is less.

6 b. There is allowed a credit against the tax imposed by sections
7 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent
8 of the aggregate amount of charitable contributions made by the
9 taxpayer during the taxable year to nonprofit private institutions of
10 secondary education located within the state. The amount
11 allowable as a credit under this subdivision for any taxable year
12 may not exceed four and six-tenths percent of the tax before credits
13 allowed under this section, or two thousand five hundred dollars,
14 whichever is less.

15 c. For the purposes of this subsection, the term "nonprofit private
16 institution of higher education" means only a nonprofit private
17 educational institution located in North Dakota which normally
18 maintains a regular faculty and curriculum and which normally has
19 a regularly organized body of students in attendance at the place
20 where its educational activities are carried on, and which regularly
21 offers education at a level above the twelfth grade. The term
22 "nonprofit private institution of secondary education" means only a
23 nonprofit private educational institution located in North Dakota
24 which normally maintains a regular faculty and curriculum approved
25 by the department of public instruction and which normally has a
26 regularly organized body of students in attendance at the place

where its educational activities are carried on, and which regularly offers education to students in the ninth through twelfth grades.

d. For the purposes of this subsection, a taxpayer may elect to treat a contribution as made in the preceding taxable year if the contribution and election are made not later than the time prescribed for filing the return for the taxable year.

2. a. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to any overpayment of tax paid pursuant to chapter 57-35 or 57-35.1, for a taxable year beginning before January 1, 1997, to the extent that the overpayment would have been an allowable deduction from tax payable for the current taxable year, under section 57-35-12 or 57-35.1-07, if chapters 57-35 and 57-35.1 applied to the current taxable year. The amount allowable as a credit under this subsection for any taxable year may not exceed five-sevenths of the tax before credits allowed under this section.

b. For purposes of determining distributions to and from the counties under section 57-35.3-09:

(1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;

(2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and

(3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.

3. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to fifty percent of the aggregate amount of contributions made by the taxpayer during the taxable year for tuition scholarships for participation in rural leadership North Dakota conducted through the North Dakota state university extension service. Contributions by a taxpayer may be earmarked for use by a designated recipient.

4. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to forty percent of a charitable gift to a qualified endowment. The maximum credit that may be claimed by a financial institution under this subsection for charitable gifts made in a taxable year may not exceed ten thousand dollars. For the purposes of the credit allowed in this subsection, subsections 1, 6, and 8 of section 57-38-01.21 apply. A charitable gift used as the basis for a credit claimed under this subsection may not be used as the basis for the claim of a credit under any other provision of this chapter.

5. There is allowed a credit against the tax imposed by sections 57-35.3-01 through 57-35.3-12 in an amount equal to the contribution to the housing incentive fund under section 54-17-40. For the purposes of the credit allowed in this subsection, subsections 2 through 8 of section 57-38-01.32 apply.

SECTION 5. AMENDMENT. Section 57-38-01.32 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.32. Housing incentive fund tax credit.

- 1 1. A taxpayer is entitled to a credit as determined under this section against
2 state income tax liability under section 57-38-30 or 57-38-30.3 for
3 contributing to the housing incentive fund under section 54-17-40. The
4 amount of the credit is equal to the amount contributed to the fund during
5 the taxable year.
- 6 2. North Dakota taxable income must be increased by the amount of the
7 contribution upon which the credit under this section is computed but only
8 to the extent the contribution reduced federal taxable income.
- 9 3. The contribution amount used to calculate the credit under this section
10 may not be used to calculate any other state income tax deduction or
11 credit allowed by law.
- 12 4. If the amount of the credit exceeds the taxpayer's tax liability for the
13 taxable year, the excess may be carried forward to each of the ten
14 succeeding taxable years.
- 15 5. The aggregate amount of tax credits allowed to all eligible contributors is
16 limited to ~~fifteen~~ thirty million dollars per biennium. This limitation applies
17 to all contributions for which tax credits are claimed under section
18 57-35.3-05 and this section.
- 19 6. Within thirty days after the date on which a taxpayer makes a contribution
20 to the housing incentive fund, the housing finance agency shall file with
21 each contributing taxpayer, and a copy with the tax commissioner,
22 completed forms that show as to each contribution to the fund by that
23 taxpayer the following:
 - 24 a. The name, address, and social security number or federal employer
25 identification number of the taxpayer that made the contribution.
 - 26 b. The dollar amount paid for the contribution by the taxpayer.
 - 27 c. The date the payment was received by the fund.

- 1 7. To receive the tax credit provided under this section, a taxpayer shall
2 claim the credit on the taxpayer's state income or financial institutions tax
3 return in the manner prescribed by the tax commissioner and file with the
4 return a copy of the form issued by the housing finance agency under
5 subsection 6.
- 6 8. Notwithstanding the time limitations contained in section 57-38-38, this
7 section does not prohibit the tax commissioner from conducting an
8 examination of the credit claimed and assessing additional tax due under
9 section 57-38-38.
- 10 9. A partnership, subchapter S corporation, limited partnership, limited
11 liability company, or any other passthrough entity making a contribution to
12 the housing incentive fund under this section is considered to be the
13 taxpayer for purposes of this section, and the amount of the credit allowed
14 must be determined at the passthrough entity level. The amount of the
15 total credit determined at the entity level must be passed through to the
16 partners, shareholders, or members in proportion to their respective
17 interests in the passthrough entity.

18 **SECTION 6. EFFECTIVE DATE.** Sections 4 and 5 of this Act are effective for
19 taxable years beginning after December 31, 2012.

20 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.