HB 1567

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1567 (Delegate D. Barnes, *et al.*)

Environment and Transportation and
Ways and Means

Housing and Community Development - Affordable Housing Development Credit Program

---

This bill creates a credit against the State income tax for the owner or developer of a low-income housing project that is a qualified development. The Secretary of the Department of Housing and Community Development (DHCD) may approve on a competitive basis up to $150.0 million in aggregate tax credit applications from July 1, 2020 through June 30, 2023. The Governor must include funding in fiscal 2022 through 2033 for the Affordable Housing Development Credit Reserve Fund, which is established in order to offset the revenue losses due to the program. **The bill takes effect July 1, 2020, and applies to tax year 2021 and beyond.**

Fiscal Summary

State Effect: General fund expenditures increase by $5.0 million in FY 2022, $10.0 million in FY 2023, and by $15.0 million in FY 2024 and 2025 due to tax credit reserve fund appropriations. General fund expenditures increase by $56,000 in FY 2022 due to one-time computer programming expenses at the Comptroller's Office. Revenues are not materially affected. **The bill establishes a mandated appropriation in FY 2022 through 2033.**

($ in millions)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	$0	$0	$0	$0	$0
GF Expenditure	0	5.1	10.0	15.0	15.0
Net Effect	$0.0	($5.1)	($10.0)	($15.0)	($15.0)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local highway user revenues decrease as a result of any credits claimed against the corporate income tax. Local expenditures are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: A qualified development is a low-income housing project, qualified under Section 42(G) of the Internal Revenue Code, which is (1) financed with tax-exempt bonds; (2) subject to a recorded restrictive covenant requiring the property to be maintained and operated as low-income housing; and (3) in compliance with Title VIII of the federal Civil Rights Act of 1968.

The Secretary of DHCD (1) may not approve a project unless the applicant demonstrates the tax credit is necessary for the financial viability of the development and (2) must competitively award tax credits in a manner consistent with the State's qualified allocation plan under the federal low-income housing tax credit (LIHTC). In fiscal 2021 through 2023, a total of $150.0 million in preliminary tax credits may be allocated to qualified developments. DHCD must adopt regulations to implement the credit and report to the General Assembly by December 1, 2022, and each of the following two years on the qualified developments that receive tax credits.

Tax credits are nonrefundable and may be claimed over a 10-year period beginning with the year in which the development is approved. Taxes that credits may be claimed against include the insurance premium tax, public service company franchise tax, and income tax. A person may not claim the workforce development tax credit with respect to the same project. The credit may be rescinded or recaptured under certain circumstances.

The bill establishes an Affordable Housing Development Credit Reserve Fund and the Governor must appropriate the following amounts to the fund: (1) $5.0 million in fiscal 2022; (2) $10.0 million in fiscal 2023; (3) $15.0 million annually in fiscal 2024 through 2031; (4) $10.0 million in fiscal 2032; and (5) $5.0 million in fiscal 2033.

Current Law/Background:

Federal Low-income Housing Tax Credit

LIHTC was created by the federal Tax Reform Act of 1986 to provide an incentive for the development and rehabilitation of affordable rental housing. These nonrefundable federal housing tax credits are awarded to developers of qualified rental projects via a competitive application process administered by state housing finance authorities. LIHTCs are first allocated to each state according to its population. In 2019, states received an LIHTC allocation of $2.75625 per person, with a minimum small population state allocation of $3,166,875. State housing agencies allocate credits to developers of rental housing according to federally required, but state created, qualified allocation plans. Federal law requires that these plans give priority to projects that serve the lowest income households and that remain affordable for the longest period of time.

In order to be eligible for an LIHTC allocation, properties are required to meet certain tests that restrict both the amount of rent that is assessed to tenants and the income of eligible tenants. Two types of LIHTCs are available depending on the nature of the construction project. The 9% credit is generally reserved for new construction, while the 4% credit is typically used for rehabilitation projects and new construction that is financed with tax-exempt bonds. Each year, for 10 years, a tax credit equal to roughly 4% or 9% of a project's qualified basis (cost of construction) is claimed.

Developers typically sell their tax credits to outside investors in exchange for equity in the project. Selling the tax credits reduces the debt developers would otherwise have to incur and the equity they would otherwise have to contribute. The LIHTC is estimated to cost the federal government an average of approximately $9.9 billion annually.

Workforce Housing Project Tax Credit

Chapter 211 of 2019 established a credit against the State income tax for a qualified workforce housing project located within an opportunity zone. The housing must either be rental housing that is affordable to a household with an aggregate annual income of between 50% and 100% of the area median income or homeownership housing that is affordable to a household with an aggregate annual income of between 60% and 120% of the area median income. In target areas under the Maryland Mortgage Program, the homeownership housing affordability threshold is equal to between 60% and 150% of the area median income.

Historic Revitalization Tax Credit Program

The Historic Revitalization Tax Credit Program provides tax credits for commercial, small commercial, and owner-occupied residential property rehabilitations. Chapters 842 and 843 of 2018 altered the commercial tax credit program by providing an additional 5% credit if the rehabilitation qualifies as affordable housing, which means a project or undertaking that has received an allocation of federal LIHTCs by DHCD.

State Expenditures: The bill establishes the Affordable Housing Development Credit Program in DHCD and mandates specified funding to the reserve fund established by the bill. As a result, the net effect on State finances will be a decrease of $5.1 million in fiscal 2022.

Tax Credit Reserve Fund

The bill authorizes DHCD to award tax credits and requires the Governor to appropriate a total of $150 million to the reserve fund established by the bill in fiscal 2022 through 2033. Money appropriated to the reserve fund will offset the revenue losses from program tax credits. As a result, general fund expenditures will increase by $5.0 million in fiscal 2022, $10.0 million in fiscal 2023, and by $15.0 million in fiscal 2024 and 2025. General fund expenditures will total $15.0 million annually from fiscal 2026 through 2031, $10.0 million in fiscal 2032, and $5.0 million in fiscal 2033.

Administrative Expenses

The Comptroller's Office reports that it will incur a one-time expenditure increase of $56,000 in fiscal 2022 to add the credit to the personal and corporate income tax credit forms. This amount includes data processing changes to the income tax return processing and imaging systems and systems testing.

DHCD advises that it can administer the tax credit within existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 715 (Senator Guzzone, *et al.*) - Budget and Taxation.

Information Source(s): Comptroller's Office; Department of Housing and Community Development; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2020
rh/jrb

Analysis by: Robert J. Rehrmann

Direct Inquiries to:
(410) 946-5510
(301) 970-5510