

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2943

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AS INTRODUCED

An Act relating to public finance; defining terms; authorizing municipalities or certain other entities to be designated as housing credit agencies; prohibiting designation of certain entity as housing credit agency; requiring certain provision in qualified allocation plans; authorizing carryover allocations for certain purposes; prohibiting certain commitments; requiring provision in qualified allocation plans to contain notice procedures; prescribing procedures for notification of certain public officials; providing for content of notice; authorizing certain civil actions by public officials; prescribing venue for actions; prescribing statute of limitations for civil actions; requiring municipalities or other designated entities to provide formal notification to certain entity; prescribing effect of notification; providing for transfer of certain tax credits; providing for reduction of certain allocation of tax credits; prescribing procedures with respect to jurisdiction over credits; prescribing formula for allocation of tax credits

to municipalities or designated entities; providing formula applicable to certain portions of total allocation of credits to state; requiring preference for rehabilitation of existing housing units; requiring market study for applications; prescribing certain requirements related to market study; imposing requirements with respect to certain persons; requiring demonstration; prescribing standard of proof; prohibiting allocation of tax credits upon certain conditions; providing exception; imposing requirements based upon changes in applications; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1101 of Title 62, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Allocation" means, with respect to the State of Oklahoma, the amount of low-income housing tax credits available pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, for award on an annual basis by one or more housing credit agencies and with respect to municipalities means the amount of the annual state housing credit ceiling transferred to a municipality pursuant to Section 5 of this act;

2. "Applicant" means a person, firm, partnership, association, company, corporation, estate, trust, limited liability company or any other legal entity or combination of legal entities that applies

for an award of any part of the state housing credit ceiling or any part of an allocation of the state housing credit ceiling under the jurisdiction of a municipality pursuant to this act;

3. "Development" or "low-income housing development" means any unit or combination of units designed to house tenants in a manner that qualifies the owner of the development for an award of low-income housing tax credits pursuant to 26 U.S.C., Section 42;

4. "Housing credit agency", with respect to the State of Oklahoma, means the entity designated by executive order of the Governor of the State of Oklahoma as a housing credit agency as defined by 26 U.S.C., Section 42(h)(8), and with respect to any other entity, means a municipality or a public trust or other entity, including an administrative subunit of municipal government without separate legal status, that is specifically designated by a municipality to administer a qualified allocation plan for the distribution of low-income housing tax credits pursuant to 26 U.S.C., Section 42;

5. "Low-income housing tax credits" means those federal income tax credits authorized by 26 U.S.C., Section 42 and the rules or regulations of the Internal Revenue Service or United States Department of the Treasury regarding those credits;

6. "Market study" means an analysis of the supply of existing housing within some specified geographic area surrounding a proposed low-income housing development and a specific analysis of the extent to which persons within that area would or would not benefit from rehabilitation of existing housing units or the construction of new housing units supported by an award of low-income housing tax credits;

7. "Municipality" means a political subdivision authorized by Article XVIII of the Constitution of the State of Oklahoma or organized pursuant to a general law enacted for the purpose of forming a city or town;

8. "Qualified allocation plan" means a written system for the allocation of low-income housing tax credits allocated to the State of Oklahoma pursuant to 26 U.S.C., Section 42 and conforming to the requirements of the Internal Revenue Code of 1986, as amended, together with any applicable rules and regulations governing the low-income housing tax credit program;

9. "State housing credit ceiling" means the total amount of tax credits available for allocation by the State of Oklahoma pursuant to 26 U.S.C., Section 42(h) (3) (C) and initially under the control of the entity described in subsection A of Section 5 of this act; and

10. "Tax credits" means those quantities of economic value which may be claimed on a federal income tax return pursuant to 26 U.S.C., Sections 38 and 42, in order to reduce the federal income tax liability of the taxpayer.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1102 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. A municipality, or an entity specifically designated by action of the governing board of a municipality, shall be designated as a "housing credit agency" within the meaning of and for the purposes prescribed by 26 U.S.C., Section 42(h) (3) (A), (B) and (C) if the municipality or its designated agency or instrumentality exercises an option to receive its share of the annual state housing credit ceiling pursuant to Section 5 of this act. Each municipality or specifically designated entity exercising an option to receive an allocation of credits pursuant to Section 5 of this act shall adopt a "qualified allocation plan" as defined by 26 U.S.C., Section 42(m) (1) (A), (B) and (C).

B. No municipality shall designate as its authorized housing credit agency a public trust or other instrumentality having the State of Oklahoma as its beneficiary, including the entity described in subsection A of Section 5 of this act. A public trust or other

instrumentality may act on behalf of the municipality in implementing the requirements of this act if and only if the public trust or other instrumentality is specifically authorized to adopt and implement a qualified allocation plan and the municipality making the designation is the beneficiary of the trust or has acted to create an agency or other instrumentality for this purpose.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1103 of Title 62, unless there is created a duplication in numbering, reads as follows:

Each housing credit agency, including the entity described in subsection A of Section 5 of this act, shall incorporate into its respective qualified allocation plan a provision which prohibits the allocation of any tax credits to an applicant from a state housing credit ceiling amount which is not specifically determined as of the date upon which the allocation is made to an applicant. No agreement, order, action or other undertaking by any housing credit agency to allocate, award, reserve or otherwise act upon a credit amount to be awarded or allocated to the State of Oklahoma for a future calendar year shall be effective as an allocation pursuant to 26 U.S.C., Section 42. The provisions of this subsection shall not prohibit carryover allocations as authorized by 26 U.S.C., Section 42.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1104 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Each housing credit agency, including the entity described in subsection A of Section 5 of this act, shall incorporate into its qualified allocation plan a requirement that, upon receipt of an application by an applicant for an allocation of any portion of the state housing credit ceiling amount subject to the jurisdiction of the housing credit agency, a notice shall be prepared in accordance with the requirements of this section.

B. The housing credit agency shall determine the applicable state legislative districts in which the proposed development is to be located, including the relevant district for the Oklahoma House of Representatives and the State Senate. The housing credit agency shall determine if the proposed development is located in multiple legislative districts. The housing credit agency shall notify each state representative and each state senator whose district includes the land area upon which the proposed development is to be located.

C. The housing credit agency shall determine the relevant county commissioner district, if the proposed development is to be located in an unincorporated area, or municipal ward or other relevant local jurisdiction in which the proposed development is to be located. The notice required by this section shall be provided to each county or municipal official within whose relevant district the proposed development is to be located. If the development is to be located in an incorporated area of a county, no notice shall be required to be given to the county commissioner in whose district the development will be located.

D. The notification required by subsection B and subsection C of this section shall:

1. Be in writing;
2. Describe the exact location of the proposed development either by street address or by reference to readily identifiable landmarks or boundaries;
3. Be transmitted to the relevant public officials by certified mail, with return receipt requested, and at the option of the housing credit agency, by use of restricted delivery;
4. Be transmitted within three (3) working days of the date upon which the application is received by the housing credit agency;
5. Include the identity of the applicant for the tax credit allocation as stated on the application filed with the housing credit agency; and

6. Include the date as of which the housing credit agency has scheduled any proceeding during which information may be gathered regarding the proposed development or during which any decision regarding allocation of tax credits may be made.

E. A public official to whom notice is required to be given as provided by this section, whether or not the notice is actually received, shall have the legal right to maintain an action, in his or her own name, or on the relation of persons or other legal entities having some interest in the decision by the relevant housing credit agency regarding the low-income housing tax credits, to maintain a civil action to obtain any form of legal or equitable relief based upon a claim that:

1. The housing credit agency has violated any procedure in connection with the decision to allocate tax credits under its jurisdiction; or

2. The housing credit agency should not allocate the tax credits for reasons of substantive law.

F. The action authorized by subsection E of this section may be commenced in the district court for the county in which the proposed development site is to be located in the manner provided by law for the filing of other civil actions. Actions authorized by subsection E of this section may only be maintained by a public official with respect to a proposed development located or to be located within the geographical boundary of the relevant district from which the public official was elected.

G. Any action authorized by subsection E of this section may be commenced not later than ninety (90) days after the latest date upon which an affected public official receives the notice prescribed by subsection D of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1105 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Effective January 1, 1997, the entity designated by executive order of the Governor of the State of Oklahoma as a housing credit agency, as defined by 26 U.S.C., Section 42(h)(8), shall be the initial recipient of all the credits allocated to the State of Oklahoma pursuant to 26 U.S.C., Section 42(h)(3)(B) and (C).

B. The entity described in subsection A of this section shall reserve ten percent (10%) of the state housing credit ceiling for the exclusive use of applicants for developments in unincorporated areas of the State of Oklahoma. No credit amount reserved pursuant to this subsection shall be allocated to a development or unit to be located within the boundary of an incorporated city or town. The entity described in subsection A of this section shall comply with the requirements of 26 U.S.C., Section 42(h)(5)(A) with respect to the credits reserved pursuant to this subsection.

C. On an annual basis, not later than the 20th day of January, each municipality or its designated agency or instrumentality, shall notify the entity described in subsection A of this section, by certified mail, with return receipt requested, whether any portion of the state housing credit ceiling is claimed by the municipality or its designee for award to tax credit applicants. Upon receipt of a request, the entity described in subsection A of this section shall record the amount of credit allocation authority to which the municipality, or its designee, is entitled and shall prepare a document evidencing the transfer. One copy of the document of transfer shall be transmitted to the municipality or its designee and the original shall be retained by the entity making the credit transfer. The amount of credits initially transferred to the municipality, or its designee, shall be the amount as prescribed by subsection A of Section 6 of this act. The total amount of credits available for allocation by the entity described in subsection A of this section for any calendar year pursuant to 26 U.S.C., Section

42(h)(3)(C) shall be reduced by the amount of a credit transfer required to be made to a municipality, or its designee. Credits allocated to the entity described by subsection A of this section or to a municipality or its designee, but not awarded to an applicant by the period of time prescribed by 26 U.S.C., Section 42 shall be deemed returned to the Secretary of the Treasury pursuant to 26 U.S.C., Section 42(h)(3)(D).

D. Each municipality or its designee shall be responsible for carryover allocations of tax credits associated with applications submitted to it pursuant to this section. The entity described in subsection A of this section shall be responsible for carryover allocations of tax credits associated with applications submitted to it pursuant to this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1106 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 1997, each municipality or its designee making the election required by subsection C of Section 5 of this act shall receive from the annual state housing credit ceiling available to the State of Oklahoma, after subtracting the amount required as a set aside pursuant to subsection B of Section 5 of this act, an amount of tax credits equal to a percentage of the total state housing credit ceiling. The percentage shall be determined by dividing the population of the municipality by the total population of all municipalities of the state according to the latest Federal Decennial Census. The quotient shall be multiplied by the available state housing credit ceiling amount for allocation to municipalities and the product of this computation shall be the amount of tax credits allocated to the applicable municipality or its designated housing credit agency. The State Auditor and Inspector shall make the determination of the total amount of tax credits available to each municipality not later than the last day

of January each year and shall transmit the information regarding the amount of tax credits available to each municipality.

B. The entity described in subsection A of Section 5 of this act shall be entitled to make allocations of tax credits from the amount of the state housing credit ceiling remaining after the period for municipalities to receive an allocation pursuant to subsection C of Section 5 of this act has expired subject to the requirements of 26 U.S.C., Section 42(h)(5)(A).

C. The entity described in subsection A of Section 5 of this act shall not allocate any tax credits to an applicant proposing to construct a development within the boundary of any municipality which has elected to receive an allocation of tax credits pursuant to subsection C of Section 5 of this act.

D. A municipality receiving an allocation of tax credits from the entity described in subsection A of Section 5 of this act shall be subject to the requirements of 26 U.S.C., Section 42(h)(5)(A). After receipt of an allocation of tax credits from the entity described in subsection A of Section 5 of this act, a municipality may request an additional allocation of tax credits from any credits remaining under the jurisdiction of the entity described in subsection A of Section 5 of this act not otherwise reserved for allocation. The request shall be made by certified mail with return receipt requested. If the municipality makes a request to the entity described in subsection A of Section 5 of this act and credits are available for allocation, the request for additional allocation shall be granted. Allocations of credit made pursuant to this subsection shall be made on the basis of the order of receipt of the request. All requests for additional allocation of tax credits shall be made pursuant to a vote of the governing body of the municipality or a vote of the governing board of the designee responsible for administration of the qualified allocation plan on behalf of the municipality.

E. With respect to authorized carryover allocations of low-income housing tax credits pursuant to 26 U.S.C., Section 42(f)(1)(B) or tax credits returned to a housing credit agency, the housing credit agency responsible for the allocation of credits to a tax credit applicant shall retain jurisdiction and control over the credits until any such credits are required to be returned to the national low-income housing credit pool as required by law. All tax credits allocated to a municipality pursuant to this section shall remain under the exclusive jurisdiction of the municipality until the credits are fully used or until the credits are returned to the national low-income housing credit pool under jurisdiction of the Secretary of the Treasury.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1107 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Each housing credit agency, including the entity described in subsection A of Section 5 of this act, shall incorporate into its qualified allocation plan a provision that gives preference to the rehabilitation of existing structures compared to the construction of new housing units. The preference required by this section may be provided through a weighted award of points in a competitive system of applications for the tax credits or such other method as may be adopted by the housing credit agency.

B. The system or method adopted by a housing credit agency shall result in an award of credits to an applicant, all other factors being equal, that proposes a rehabilitation of existing units as opposed to an applicant that proposes construction of new units.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1108 of Title 62, unless there is created a duplication in numbering, reads as follows:

A. Each housing credit agency, including the entity described in subsection A of Section 5 of this act, shall incorporate into its qualified allocation plan a requirement that a market study of the housing conditions in the relevant geographical area surrounding the site of the proposed development included in the application. The qualified allocation plan shall require that the market study be included as part of a minimum or threshold requirement. The qualified allocation plan shall provide that failure to include a market study with an application shall preclude further consideration of the application. Any application submitted which does not include a market study conforming to the requirements of this section shall not be awarded any credits pursuant to 26 U.S.C., Section 42. Any credits awarded in violation of this requirement shall be null and void and shall be returned to the housing credit agency which issued the credits.

B. The market study required by this section shall be performed by a person or entity holding a designation from the Oklahoma Real Estate Commission as a:

1. State-licensed real estate appraiser;
2. State-licensed residential real estate appraiser;
3. State-certified residential real estate appraiser; or
4. State-certified general real estate appraiser.

C. As a minimum requirement, which shall be incorporated into each qualified allocation plan adopted to conform with the requirements of this section, a market study submitted with an application for tax credits shall demonstrate by clear and convincing evidence that the financial viability of a proposed development does not involve the relocation of existing market rate tenants residing in a similar development located within a five-mile radius of the site of the proposed development.

D. If a market study reveals that more than twenty percent (20%) of the units in a development will be occupied by tenants at

rental rates which are twenty percent (20%) or more below the prevailing market rental rates for similar units in the same market area, no low-income housing tax credits shall be allocated to the applicant unless the applicant can demonstrate, by clear and convincing evidence, that there is a statistically significant correlation between the absence of housing units of the precise type offered by the applicant in the proposed development at the rental rate applicable to the units in the development and an identifiable demand for units of the type offered by the applicant and at the rental rate applicable to those units.

E. If during the consideration of any application for any tax credits allocated to a housing credit agency there is any material change in the nature of the project, the character of the income levels of the tenants who are expected to occupy the development, financing for the development, or any other factor which is related to the financial feasibility of the development or which has any impact whatsoever upon the issuance of the tax credits or the amount of tax credits issued, a revised market study shall be prepared by the applicant and shall be submitted to the housing credit agency. The market study shall specifically identify the manner in which the modification in the circumstances related to the application affects the market demand for the type of housing proposed in the application.

SECTION 9. This act shall become effective January 1, 1997.

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