Adopted by the Finance and Taxation Committee

March 22, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2210

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact two new sections to chapter 54-17, a new subdivision to subsection 2 of section 54-60.1-01, 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 incentive fund and tax credits for contributions to the fund; to amend and reenact subsection 2 of section 54-17-07.2 and section 57-35.3-07 of the North Dakota Century Code, relating to the definition of multifamily housing facility and payment of the financial institutions tax; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-17-07.2 of the North Dakota Century Code is amended and reenacted as follows:

2. "Multifamily housing facility" means any facility containing ~~five~~four or more residential dwelling units; provided, that at least twenty percent of the units in each facility must be held for occupancy by persons or families of low and moderate income for ~~such~~the period of time as the industrial commission may determine and may include ~~such~~the related public or private facilities intended for commercial, cultural, recreational, community, or other civic purpose as the commission may approve.

SECTION 2. Two new sections to chapter 54-17 of the North Dakota Century Code are created and enacted as follows:

Housing incentive fund - Continuing appropriation.

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

2. After a public hearing, the housing finance agency shall create an annual allocation plan for the distribution of the fund. At least twenty-five percent of the fund must be used to assist developing communities with a population of not more than ten thousand individuals to address an unmet housing need or alleviate a housing shortage. At least fifty percent of the fund must be used to benefit households with incomes at not more than fifty percent of the area median income. The agency may collect a reasonable administrative fee from the fund.

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

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

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

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

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

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

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

Report.

Upon request, the housing finance agency shall report to the industrial commission on the activities of the housing incentive fund.

SECTION 3. A new subdivision to subsection 2 of section 54-60.1-01 of the North Dakota Century Code is created and enacted as follows:

Assistance from the housing finance agency through housing incentive funds.

SECTION 4. 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 equal to the contribution to the housing incentive fund under section 2 of this Act. The taxpayer may not claim more than twenty percent of the credit for each separate contribution made in any taxable year. For the purposes of the credit allowed in this subsection, subsections 2 through 8 of section 6 of this Act apply.

SECTION 5. AMENDMENT. Section 57-35.3-07 of the North Dakota Century Code is amended and reenacted as follows:

57-35.3-07. Payment of tax.

Two-sevenths of the tax before credits allowed under section 57-35.3-05, less the ~~credit~~credits allowed under subsection 1 of section 57-35.3-05 and section 4 of this Act, must be paid to the commissioner on or before April fifteenth of the year in which the return is due, regardless of any extension of the time for filing the return granted under section 57-35.3-06. Five-sevenths of the tax before credits allowed under section 57-35.3-05, less the credit allowed under subsection 2 of section 57-35.3-05, must be

paid to the commissioner on or before January fifteenth of the year after the return is due. Payment must be made by check, draft, or money order, payable to the commissioner, or as prescribed by the commissioner under subsection 15 of section 57-01-02.

SECTION 6. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Housing incentive fund tax credit.

1. A taxpayer is entitled to a credit as determined under this section against state income tax liability under section 57-38-30 or 57-38-30.3 for contributing to the housing incentive fund under section 2 of this Act. The amount of the credit is equal to the amount contributed to the fund during the taxable year. The taxpayer may not claim more than twenty percent of the credit for each separate contribution made in any taxable year.

2. North Dakota taxable income must be increased by the amount of the contribution upon which the credit under this section is computed but only to the extent the contribution reduced federal taxable income.

3. The contribution amount used to calculate the credit under this section may not be used to calculate any other state income tax deduction or credit allowed by law.

4. If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the excess may be carried forward to each of the ten succeeding taxable years.

5. The aggregate amount of tax credits allowed to all eligible contributors is limited to four million dollars per biennium. This limitation applies to all contributions for which tax credits are claimed under section 57-35.3-05 and this section.

6. Within thirty days after the date on which a taxpayer makes a contribution to the housing incentive fund, the housing finance agency shall file with each contributing taxpayer, and a copy with the tax commissioner, completed forms that show as to each contribution to the fund by that taxpayer the following:

   a. The name, address, and social security number or federal employer identification number of the taxpayer that made the contribution.

   b. The dollar amount paid for the contribution by the taxpayer.

   c. The date the payment was received by the fund.

7. To receive the tax credit provided under this section, a taxpayer shall claim the credit on the taxpayer's state income or financial institutions tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the housing finance agency under subsection 6.

8. Notwithstanding the time limitations contained in section 57-38-38, this section does not prohibit the tax commissioner from conducting an

examination of the credit claimed and assessing additional tax due under section 57-38-38.

9. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity making a contribution to the housing incentive fund under this section is 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.

SECTION 7. 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 incentive fund tax credit under section 6 of this Act.

SECTION 8. EFFECTIVE DATE - EXPIRATION DATE. Sections 1, 2, and 3 of this Act are effective through June 30, 2013, and are thereafter ineffective. Sections 4, 5, 6, and 7 of this Act are effective for the first two taxable years beginning after December 31, 2010, and are thereafter ineffective."

Renumber accordingly