



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3787

Introduced 2/14/2020, by Sen. Mattie Hunter

SYNOPSIS AS INTRODUCED:

New Act

35 ILCS 5/232 new

215 ILCS 5/409

215 ILCS 5/444

from Ch. 73, par. 1021

from Ch. 73, par. 1056

Creates the Build Illinois Homes Tax Credit Act. Provides that the Illinois Housing Development Authority and the City of Chicago Department of Housing may award credits for certain qualified low-income housing projects. Provides that the credits may be taken against any or all of the following: (i) the taxes imposed by the Illinois Income Tax Act; or (ii) any retaliatory or privilege tax imposed by the Illinois Insurance Code. Amends the Illinois Income Tax Act and the Illinois Insurance Code to make conforming changes. Effective immediately.

LRB101 19775 HLH 69286 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Build
5 Illinois Homes Tax Credit Act.

6 Section 5. Definitions. As used in this Act, unless the
7 context clearly requires otherwise:

8 "Allocation" means an award of tax credits to the owner of
9 a qualified development in any allocation round, to be claimed
10 ratably annually over the credit period.

11 "Allocation round" means all allocations by the Authority
12 of credits under this Act to qualified developments in any
13 calendar year.

14 "Authority" means:

15 (1) the Illinois Housing Development Authority; or

16 (2) the City of Chicago Department of Housing.

17 "Credit" means the credit allowed pursuant to Section 2 of
18 this Act.

19 "Credit period" means the period of 10 taxable years
20 beginning with the taxable year in which a qualified
21 development is placed in service. If a qualified development
22 consists of more than one building, the development is deemed
23 to be placed in service in the taxable year during which the

1 last building of the qualified development is placed in
2 service.

3 "Department" means the Illinois Department of Revenue.

4 "Federal tax credit" means the federal low-income housing
5 tax credit provided by Section 42 of the federal Internal
6 Revenue Code, including federal low-income housing tax credits
7 issued pursuant to 26 U.S.C. 42(h) (3) and 26 U.S.C. 42(h) (4).

8 "Owner certification" means the certification issued by
9 the owner of a qualified development or its designee pursuant
10 to subsection (d) of Section 10 of this Act.

11 "Qualified allocation plan" means the qualified allocation
12 plan adopted by the Authority pursuant to Section 42(m) of the
13 federal Internal Revenue Code of 1986.

14 "Qualified basis" means the qualified basis of the
15 qualified development as determined pursuant to Section 42 of
16 the federal Internal Revenue Code of 1986.

17 "Qualified development" means a qualified low-income
18 housing project, as that term is defined in Section 42 of the
19 federal Internal Revenue Code of 1986, that is located in the
20 State and is determined to be eligible for the federal tax
21 credit set forth in Section 42 of the Internal Revenue Code,
22 whether or not a federal tax credit is allocated with respect
23 to that development.

24 "Qualified taxpayer" means an individual, person, firm,
25 corporation, or other entity that owns an interest, direct or
26 indirect, in a qualified development and is subject to any or

1 all of the following: (i) the taxes imposed by the Illinois
2 Income Tax Act; or (ii) any retaliatory or privilege tax
3 imposed by the Illinois Insurance Code.

4 "State 8609 equivalent" means a statement issued by the
5 Authority with respect to each building within a qualified
6 development following construction or rehabilitation of a
7 qualified development certifying that each such building
8 within that qualified development qualifies for the credit and
9 specifying:

10 (1) the calendar year in which the last building of the
11 qualified development was placed in service;

12 (2) the amount of the credit allowed for each year of
13 the credit period; and

14 (3) the maximum qualified basis of the qualified
15 development taken into account in determining such annual
16 credit amount.

17 The State 8609 equivalent shall be issued by the Authority
18 simultaneously with IRS Form 8609, if the qualified development
19 was also allocated federal tax credits.

20 Section 10. Credit for low-income housing developments.

21 (a) The Authority shall include the credit in its annual
22 qualified allocation plan each year until expiration of this
23 Act. Each allocation round shall be simultaneous with
24 allocations of federal tax credits.

25 (b) For taxable years beginning on or after January 1,

1 2021, the Authority may allocate a credit to the owner of a
2 qualified development in any allocation round in an amount
3 determined by the Authority, subject to the following
4 guidelines:

5 (1) the Authority finding that the credit is necessary
6 for the financial feasibility of the development;

7 (2) the aggregate sum of credits allocated to qualified
8 developments in any allocation round shall not exceed
9 \$35,000,000, plus the amount of unallocated credits, if
10 any, from the preceding allocation round, plus the amount
11 of any credit recaptured or otherwise returned to the
12 Authority since the previous allocation round;

13 (3) of the \$35,000,000 annual allocation: (i) 75.5% of
14 the available credits in each allocation round shall be
15 allocated by the Illinois Housing Development Authority,
16 plus any credits the Illinois Housing Development
17 Authority did not allocate from the previous allocation
18 round, plus the amount of any credits recaptured or
19 otherwise returned to the Illinois Housing Development
20 Authority since the previous allocation round; and (ii)
21 24.5% of the available credits in each allocation round
22 shall be allocated by the City of Chicago Department of
23 Housing, plus any credits the City of Chicago Department of
24 Housing did not allocate from the previous allocation
25 round, plus the amount of any credits recaptured or
26 otherwise returned to the City of Chicago Department of

1 Housing since the previous allocation round;

2 (4) unless otherwise provided in this Act, or unless
3 the context clearly requires otherwise, the Authority must
4 determine eligibility for credits and allocate credits in
5 accordance with the standards and requirements set forth in
6 Section 42 of the federal Internal Revenue Code of 1986;

7 (c) For tax years during the credit period, any qualified
8 taxpayer is allowed a credit as provided in this Act against
9 any or all of the following: (i) the taxes imposed by
10 subsections (a), (b), and (c) of Section 201 of the Illinois
11 Income Tax Act; or (ii) any retaliatory or privilege tax
12 imposed under the Illinois Insurance Code.

13 (d) If an owner of a qualified development receiving an
14 allocation of a credit is a partnership, limited liability
15 company, S corporation, or similar pass-through entity, the
16 owner may allocate the credit available during a year in the
17 credit period among its partners, shareholders, members, or
18 other constituent taxpayers in any manner agreed to by such
19 persons and, in the case of multiple tiers of pass-through
20 entities, the credit may be so allocated through any number of
21 pass-through entities in any manner agreed by the owners of
22 those pass-through entities, whether or not such persons are
23 allocated or allowed any portion of any federal tax credit with
24 respect to the qualified development. To be eligible to receive
25 an allocation of credits, the partners, shareholders, members,
26 or other constituent taxpayers must be a member of the entity

1 at the end of the taxable year in which the allocation occurs.
2 The owner must submit an owner certification to the Department
3 detailing the amount of credit allocated to each constituent
4 taxpayer, or the owner must notify the Department that it has
5 assigned the duty of the owner certification to one such
6 constituent taxpayer who must provide such owner certification
7 to the Department. Each constituent taxpayer is allowed to
8 claim such amount of credit subject to any restrictions set
9 forth in this Section.

10 (e) Any partner, shareholder, member or other constituent
11 taxpayer that receives a direct or indirect allocation of
12 credits from the owner of a qualified development may transfer
13 the credit to any third party subject to taxes imposed by the
14 Illinois Income Tax Act or the Illinois Insurance Code. The
15 transferring partner, shareholder, member, or other
16 constituent taxpayer shall be liable for any recapture pursuant
17 to Section 15, and the transferee shall not be liable for
18 recapture pursuant to Section 15. The owner of the qualified
19 development may not transfer the credit.

20 (f) No credit may be allocated pursuant to this Act unless
21 the qualified development is the subject of a recorded
22 restrictive covenant requiring the development to be
23 maintained and operated as a qualified development; this
24 requirement for a recorded restrictive covenant may be
25 satisfied by the agreement for an extended low-income housing
26 commitment required for the federal tax credits as defined in

1 Section 42(h)(6)(B) of the federal Internal Revenue Code of
2 1986.

3 (g) If, during a taxable year, there is a determination
4 that no recorded restrictive covenant meeting the requirements
5 of subsection (f) was in effect as of the beginning of that
6 year, such determination shall not apply to any period before
7 that year and subsection (f) shall be applied without regard to
8 that determination if the failure is corrected within one year
9 from the date of the determination.

10 (h) The credit amount may be taken against the taxes
11 imposed by the Illinois Income Tax Act for each taxable year of
12 the credit period. The credit amount may be taken against the
13 taxes imposed by the Illinois Insurance Code for each reporting
14 period in the credit period. Any credit amount that exceeds the
15 tax due for a taxable year may be carried forward as a tax
16 credit against payments due for up to 5 taxable years following
17 the tax year to which the credit relates and must be applied
18 first to the earliest reporting periods possible. Credits that
19 are not claimed may not be refunded to the taxpayer.

20 Section 15. Recapture. If, under Section 42 of the Internal
21 Revenue Code of 1986, a portion of any federal tax credit
22 claimed with respect to a qualified development is required to
23 be recaptured during the first 10 years after a project is
24 placed in service, then the Department shall recapture a
25 portion of the related credits under this Act from the taxpayer

1 who claimed the credit or, in the case of a transfer, from the
2 transferee. The amount of credit subject to recapture shall be
3 proportionately equal to the amount of the qualified
4 development's federal tax credits which are subject to
5 recapture. If that recapture of any credit is required in any
6 tax year, the return submitted for that tax year by the owner
7 of the qualified development to the Department must include the
8 proportion of credit required to be recaptured, the identity of
9 the taxpayer subject to recapture, and the amount of credit
10 previously allocated to that taxpayer. The taxpayer subject to
11 recapture shall increase such taxpayer's tax by the amount of
12 any credit wrongfully claimed by itself or its transferee.
13 Those adjustments shall be made in the year the reduction in
14 qualified basis is identified.

15 Section 20. Filing requirements. An owner of a qualified
16 development that has received an allocation and each qualified
17 taxpayer to which that owner has allocated a portion of the
18 credit, if any, must file with their State tax returns a copy
19 of the State 8609 equivalent issued by the Authority for that
20 development as well as a copy of the owner certification.

21 Section 25. Rules. The Illinois Housing Development
22 Authority and the Department, in consultation with each other,
23 shall adopt such rules as are necessary to carry out their
24 respective responsibilities under this Act.

1 Section 30. Compliance monitoring. The Authority, in
2 consultation with the Department, shall monitor and oversee
3 compliance with the provisions of this Act and shall report
4 specific occurrences of noncompliance to the Department.

5 Section 35. Report to the General Assembly.

6 (a) The Illinois Housing Development Authority must, by
7 December 31 of each allocation year, provide a written report
8 to the General Assembly and must publish that report on its
9 website.

10 (b) The report shall:

11 (1) set forth the number of qualified developments that
12 have been allocated tax credits under this Act during the
13 allocation year and the total number of units supported by
14 each development;

15 (2) describe each qualified development that has been
16 allocated such credits including, without limitation, the
17 geographic location of the development, the household type
18 and any specific demographic information available about
19 residents intended to be served by the development, the
20 income levels intended to be served by the development, and
21 the rents or set-asides authorized for each development;

22 (3) provide housing market and demographic information
23 that demonstrates how the qualified developments supported
24 by the tax credits are addressing the need for affordable

1 housing within the communities they are intended to serve
2 as well as information about any remaining disparities in
3 the affordability of housing within those communities;

4 (4) provide information on the percentage of
5 developments allocated credits that received incentive
6 scoring points in the qualified allocation plan as a result
7 of the general contractor, property manager, architect, or
8 sponsor being certified under the Business Enterprise
9 Program for Minorities, Females, and Persons with a
10 Disability.

11 Section 40. Exempt from automatic sunset. The credit under
12 this Act is exempt from the provisions of Section 250 of the
13 Illinois Income Tax Act.

14 Section 90. The Illinois Income Tax Act is amended by
15 adding Section 232 as follows:

16 (35 ILCS 5/232 new)

17 Sec. 232. Build Illinois Homes Tax Credit Act. For taxable
18 years beginning on or after January 1, 2021, taxpayers are
19 entitled to credits against the taxes imposed by subsections
20 (a), (b), and (c) of Section 201 as provided in the Build
21 Illinois Homes Tax Credit Act.

22 Section 95. The Illinois Insurance Code is amended by

1 changing Sections 409 and 444 as follows:

2 (215 ILCS 5/409) (from Ch. 73, par. 1021)

3 Sec. 409. Annual privilege tax payable by companies.

4 (1) As of January 1, 1999 for all health maintenance
5 organization premiums written; as of July 1, 1998 for all
6 premiums written as accident and health business, voluntary
7 health service plan business, dental service plan business, or
8 limited health service organization business; and as of January
9 1, 1998 for all other types of insurance premiums written,
10 every company doing any form of insurance business in this
11 State, including, but not limited to, every risk retention
12 group, and excluding all fraternal benefit societies, all farm
13 mutual companies, all religious charitable risk pooling
14 trusts, and excluding all statutory residual market and special
15 purpose entities in which companies are statutorily required to
16 participate, whether incorporated or otherwise, shall pay, for
17 the privilege of doing business in this State, to the Director
18 for the State treasury a State tax equal to 0.5% of the net
19 taxable premium written, together with any amounts due under
20 Section 444 of this Code, except that the tax to be paid on any
21 premium derived from any accident and health insurance or on
22 any insurance business written by any company operating as a
23 health maintenance organization, voluntary health service
24 plan, dental service plan, or limited health service
25 organization shall be equal to 0.4% of such net taxable premium

1 written, together with any amounts due under Section 444. Upon
2 the failure of any company to pay any such tax due, the
3 Director may, by order, revoke or suspend the company's
4 certificate of authority after giving 20 days written notice to
5 the company, or commence proceedings for the suspension of
6 business in this State under the procedures set forth by
7 Section 401.1 of this Code. The gross taxable premium written
8 shall be the gross amount of premiums received on direct
9 business during the calendar year on contracts covering risks
10 in this State, except premiums on annuities, premiums on which
11 State premium taxes are prohibited by federal law, premiums
12 paid by the State for health care coverage for Medicaid
13 eligible insureds as described in Section 5-2 of the Illinois
14 Public Aid Code, premiums paid for health care services
15 included as an element of tuition charges at any university or
16 college owned and operated by the State of Illinois, premiums
17 on group insurance contracts under the State Employees Group
18 Insurance Act of 1971, and except premiums for deferred
19 compensation plans for employees of the State, units of local
20 government, or school districts. The net taxable premium shall
21 be the gross taxable premium written reduced only by the
22 following:

23 (a) the amount of premiums returned thereon which shall
24 be limited to premiums returned during the same preceding
25 calendar year and shall not include the return of cash
26 surrender values or death benefits on life policies

1 including annuities;

2 (b) dividends on such direct business that have been
3 paid in cash, applied in reduction of premiums or left to
4 accumulate to the credit of policyholders or annuitants. In
5 the case of life insurance, no deduction shall be made for
6 the payment of deferred dividends paid in cash to
7 policyholders on maturing policies; dividends left to
8 accumulate to the credit of policyholders or annuitants
9 shall be included as gross taxable premium written when
10 such dividend accumulations are applied to purchase
11 paid-up insurance or to shorten the endowment or premium
12 paying period.

13 (2) The annual privilege tax payment due from a company
14 under subsection (4) of this Section may be reduced by: (a) the
15 excess amount, if any, by which the aggregate income taxes paid
16 by the company, on a cash basis, for the preceding calendar
17 year under Sections 601 and 803 of the Illinois Income Tax Act
18 exceed 1.5% of the company's net taxable premium written for
19 that prior calendar year, as determined under subsection (1) of
20 this Section; and (b) the amount of any fire department taxes
21 paid by the company during the preceding calendar year under
22 Section 11-10-1 of the Illinois Municipal Code. Any deductible
23 amount or offset allowed under items (a) and (b) of this
24 subsection for any calendar year will not be allowed as a
25 deduction or offset against the company's privilege tax
26 liability for any other taxing period or calendar year.

1 (3) If a company survives or was formed by a merger,
2 consolidation, reorganization, or reincorporation, the
3 premiums received and amounts returned or paid by all companies
4 party to the merger, consolidation, reorganization, or
5 reincorporation shall, for purposes of determining the amount
6 of the tax imposed by this Section, be regarded as received,
7 returned, or paid by the surviving or new company.

8 (4) (a) All companies subject to the provisions of this
9 Section shall make an annual return for the preceding calendar
10 year on or before March 15 setting forth such information on
11 such forms as the Director may reasonably require. Payments of
12 quarterly installments of the taxpayer's total estimated tax
13 for the current calendar year shall be due on or before April
14 15, June 15, September 15, and December 15 of such year, except
15 that all companies transacting insurance in this State whose
16 annual tax for the immediately preceding calendar year was less
17 than \$5,000 shall make only an annual return. Failure of a
18 company to make the annual payment, or to make the quarterly
19 payments, if required, of at least 25% of either (i) the total
20 tax paid during the previous calendar year or (ii) 80% of the
21 actual tax for the current calendar year shall subject it to
22 the penalty provisions set forth in Section 412 of this Code.

23 (b) Notwithstanding the foregoing provisions, no annual
24 return shall be required or made on March 15, 1998, under this
25 subsection. For the calendar year 1998:

26 (i) each health maintenance organization shall have no

1 estimated tax installments;

2 (ii) all companies subject to the tax as of July 1,
3 1998 as set forth in subsection (1) shall have estimated
4 tax installments due on September 15 and December 15 of
5 1998 which installments shall each amount to no less than
6 one-half of 80% of the actual tax on its net taxable
7 premium written during the period July 1, 1998, through
8 December 31, 1998; and

9 (iii) all other companies shall have estimated tax
10 installments due on June 15, September 15, and December 15
11 of 1998 which installments shall each amount to no less
12 than one-third of 80% of the actual tax on its net taxable
13 premium written during the calendar year 1998.

14 In the year 1999 and thereafter all companies shall make
15 annual and quarterly installments of their estimated tax as
16 provided by paragraph (a) of this subsection.

17 (5) In addition to the authority specifically granted under
18 Article XXV of this Code, the Director shall have such
19 authority to adopt rules and establish forms as may be
20 reasonably necessary for purposes of determining the
21 allocation of Illinois corporate income taxes paid under
22 subsections (a) through (d) of Section 201 of the Illinois
23 Income Tax Act amongst members of a business group that files
24 an Illinois corporate income tax return on a unitary basis, for
25 purposes of regulating the amendment of tax returns, for
26 purposes of defining terms, and for purposes of enforcing the

1 provisions of Article XXV of this Code. The Director shall also
2 have authority to defer, waive, or abate the tax imposed by
3 this Section if in his opinion the company's solvency and
4 ability to meet its insured obligations would be immediately
5 threatened by payment of the tax due.

6 (6) This Section is subject to the provisions of Section 10
7 of the New Markets Development Program Act.

8 (7) This Section is subject to the provisions of the Build
9 Illinois Homes Tax Credit Act.

10 (Source: P.A. 97-813, eff. 7-13-12; 98-1169, eff. 1-9-15.)

11 (215 ILCS 5/444) (from Ch. 73, par. 1056)

12 Sec. 444. Retaliation.

13 (1) Whenever the existing or future laws of any other state
14 or country shall require of companies incorporated or organized
15 under the laws of this State as a condition precedent to their
16 doing business in such other state or country, compliance with
17 laws, rules, regulations, and prohibitions more onerous or
18 burdensome than the rules and regulations imposed by this State
19 on foreign or alien companies, or shall require any deposit of
20 securities or other obligations in such state or country, for
21 the protection of policyholders or otherwise or require of such
22 companies or agents thereof or brokers the payment of
23 penalties, fees, charges, or taxes greater than the penalties,
24 fees, charges, or taxes required in the aggregate for like
25 purposes by this Code or any other law of this State, of

1 foreign or alien companies, agents thereof or brokers, then
2 such laws, rules, regulations, and prohibitions of said other
3 state or country shall apply to companies incorporated or
4 organized under the laws of such state or country doing
5 business in this State, and all such companies, agents thereof,
6 or brokers doing business in this State, shall be required to
7 make deposits, pay penalties, fees, charges, and taxes, in
8 amounts equal to those required in the aggregate for like
9 purposes of Illinois companies doing business in such state or
10 country, agents thereof or brokers. Whenever any other state or
11 country shall refuse to permit any insurance company
12 incorporated or organized under the laws of this State to
13 transact business according to its usual plan in such other
14 state or country, the director may, if satisfied that such
15 company of this State is solvent, properly managed, and can
16 operate legally under the laws of such other state or country,
17 forthwith suspend or cancel the license of every insurance
18 company doing business in this State which is incorporated or
19 organized under the laws of such other state or country to the
20 extent that it insures in this State against any of the risks
21 or hazards which are sought to be insured against by the
22 company of this State in such other state or country.

23 (2) The provisions of this Section shall not apply to
24 residual market or special purpose assessments or guaranty fund
25 or guaranty association assessments, both under the laws of
26 this State and under the laws of any other state or country,

1 and any tax offset or credit for any such assessment shall, for
2 purposes of this Section, be treated as a tax paid both under
3 the laws of this State and under the laws of any other state or
4 country.

5 (3) The terms "penalties", "fees", "charges", and "taxes"
6 in subsection (1) of this Section shall include: the penalties,
7 fees, charges, and taxes collected on a cash basis under State
8 law and referenced within Article XXV exclusive of any items
9 referenced by subsection (2) of this Section, but including any
10 tax offset allowed under Section 531.13 of this Code; the
11 aggregate Illinois corporate income taxes paid under Sections
12 601 and 803 of the Illinois Income Tax Act during the calendar
13 year for which the retaliatory tax calculation is being made,
14 less the recapture of any Illinois corporate income tax cash
15 refunds to the extent that the amount of tax refunded was
16 reported as part of the Illinois basis in the calculation of
17 the retaliatory tax for a prior tax year, provided that such
18 recaptured refund shall not exceed the amount necessary for
19 equivalence of the Illinois basis with the state of
20 incorporation basis in such tax year, and after any tax offset
21 allowed under Section 531.13 of this Code; income or personal
22 property taxes imposed by other states or countries; penalties,
23 fees, charges, and taxes of other states or countries imposed
24 for purposes like those of the penalties, fees, charges, and
25 taxes specified in Article XXV of this Code exclusive of any
26 item referenced in subsection (2) of this Section; and any

1 penalties, fees, charges, and taxes required as a franchise,
2 privilege, or licensing tax for conducting the business of
3 insurance whether calculated as a percentage of income, gross
4 receipts, premium, or otherwise.

5 (4) Nothing contained in this Section or Section 409 or
6 Section 444.1 is intended to authorize or expand any power of
7 local governmental units or municipalities to impose taxes,
8 fees, or charges.

9 (5) This Section is subject to the provisions of Section 10
10 of the New Markets Development Program Act.

11 (6) This Section is subject to the provisions of the Build
12 Illinois Homes Tax Credit Act.

13 (Source: P.A. 98-1169, eff. 1-9-15.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.