

SB2440



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2440

Introduced 2/26/2021, by Sen. Mattie Hunter

SYNOPSIS AS INTRODUCED:

New Act
35 ILCS 5/232 new

Creates the Build Illinois Homes Tax Credit Act. Provides that the Illinois Housing Development Authority and the City of Chicago Department of Housing may allocate tax credits to the owners of qualified developments. Provides that the term "qualified development" means a qualified low-income housing project. Amends the Illinois Income Tax Act to make conforming changes. Effective immediately.

LRB102 16481 HLH 21873 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 1-1. Short title. This Act may be cited as the
5 Build Illinois Homes Tax Credit Act.

6 Section 1-5. 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 "Allocation schedule certification" means the
15 certification issued by the owner of a qualified development
16 or its designee pursuant to subsection (d) of Section 1-10 of
17 this Act.

18 "Authority" means:

19 (1) the Illinois Housing Development Authority; or

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

21 "Community revitalization strategy" means an implemented
22 strategy that is designed to lead to measurable increases in
23 access to employment, access to healthcare services, access to

1 transportation, access to community amenities, improvement to
2 the quality of housing stock, or affordable housing
3 opportunities.

4 "Credit" means the credit allowed pursuant to this Act.

5 "Credit period" means the period of 10 taxable years
6 beginning with the taxable year in which a qualified
7 development is placed in service. If a qualified development
8 consists of more than one building, the qualified development
9 is deemed to be placed in service in the taxable year during
10 which the last building of the qualified development is placed
11 in service.

12 "Department" means the Department of Revenue.

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

17 "Opportunity area" means an area of low poverty and high
18 income with exact determination methodology determined yearly
19 by each individual Authority.

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

23 "Qualified basis" means the qualified basis of the
24 qualified development as determined pursuant to Section 42 of
25 the federal Internal Revenue Code of 1986.

26 "Qualified development" means a qualified low-income

1 housing project, as that term is defined in Section 42 of the
2 federal Internal Revenue Code of 1986, that is located in the
3 State and is determined to be eligible for the federal tax
4 credit set forth in Section 42 of the Internal Revenue Code,
5 whether or not a federal tax credit is allocated with respect
6 to that qualified development.

7 "Qualified taxpayer" means an individual, person, firm,
8 corporation, or other entity that owns an interest, direct or
9 indirect, in a qualified development and is subject to any or
10 all of the following: (i) the taxes imposed by the Illinois
11 Income Tax Act; or (ii) any privilege tax or retaliatory tax,
12 penalty, fee, charge or payment imposed by the Illinois
13 Insurance Code.

14 "State credit eligibility statement" means a statement
15 issued by the Authority under Section 1-7.

16 "State tax return" means the income tax return filed with
17 the Department or the privilege and retaliatory tax return
18 filed with the Department of Insurance, as applicable.

19 Section 1-7. State credit eligibility statements. A State
20 credit eligibility statement shall be issued by the Authority
21 with respect to each building within the qualified development
22 following construction or rehabilitation of the qualified
23 development certifying that each such building within that
24 qualified development qualifies for the credit and specifying:

25 (1) the calendar year in which the last building of

1 the qualified development was placed in service;

2 (2) the amount of the credit allowed for each year of
3 the credit period;

4 (3) the maximum qualified basis of the qualified
5 development taken into account in determining such annual
6 credit amount; and

7 (4) a unique identification number for each State
8 credit eligibility statement issued.

9 The State credit eligibility statement shall be issued by
10 the Authority simultaneously with IRS Form 8609 if the
11 qualified development was also allocated federal tax credits.

12 The State credit eligibility statement shall include a
13 Section to be completed by the owner of the qualified
14 development annually for each year of the credit period
15 certifying that the qualified development was in conformance
16 with all compliance requirements. That certification shall be
17 filed with the project owner's State tax return annually of
18 each year of the credit period.

19 Section 1-10. Credit for low-income housing developments.

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

24 (b) For taxable years beginning on or after January 1,
25 2022, the Authority may allocate a credit to the owner of a

1 qualified development in any allocation round in an amount
2 determined by the Authority, subject to the following
3 guidelines:

4 (1) the Authority must find that the credit is
5 necessary for the financial feasibility of the qualified
6 development;

7 (2) the aggregate sum of credits allocated to
8 qualified developments in any allocation round shall not
9 exceed \$35,000,000, plus the amount of unallocated
10 credits, if any, from the preceding allocation round, plus
11 the amount of any credit recaptured or otherwise returned
12 to the 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
24 of 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) the scoring process used by the Illinois Housing
3 Development Authority to award credits, detailed in the
4 yearly Qualified Allocation Plan, must have 25% of
5 available points given to projects built in opportunity
6 areas, projects that use a community revitalization
7 strategy, or some combination of those factors;

8 (5) units of local government and home rule
9 communities that submit qualified allocation plans for
10 affordable housing may use their own metrics for awarding
11 credits so long as these metrics are no less restrictive
12 than paragraph (4); and

13 (6) unless otherwise provided in this Act, or unless
14 the context clearly requires otherwise, the Authority must
15 determine eligibility for credits and allocate credits in
16 accordance with the standards and requirements set forth
17 in Section 42 of the federal Internal Revenue Code of
18 1986.

19 (c) For tax years during the credit period, any qualified
20 taxpayer is allowed a credit as provided in this Act against
21 any or all of the following: (i) the taxes imposed by
22 subsections (a) and (b) of Section 201 of the Illinois Income
23 Tax Act; or (ii) any privilege tax or retaliatory tax,
24 penalty, fee, charge, or payment imposed under the Illinois
25 Insurance Code.

26 (d) If a taxpayer receiving an allocation of a credit is

1 (i) a corporation that has an election in effect under
2 Subchapter S of the federal Internal Revenue Code, (ii) a
3 partnership, or (iii) a limited liability company, that is
4 required to file a tax return, the credit provided under this
5 Act may be claimed by the shareholders of the corporation, the
6 partners of the partnership, or the members of the limited
7 liability company in the same manner as those shareholders,
8 partners, or members account for their proportionate shares of
9 the income or losses of the corporation, partnership, or
10 limited liability company, or as provided in the bylaws or
11 other executed agreement of the corporation, partnership, or
12 limited liability company. Credits granted to a partnership, a
13 limited liability company taxed as a partnership, or other
14 multiple owners of property shall be passed through to the
15 partners, members, or owners respectively on a pro rata basis
16 or pursuant to an executed agreement among the partners,
17 members, or owners documenting any alternative distribution
18 method, regardless of whether any such person is deemed a
19 partner for federal income tax purposes, as long as the
20 partner, shareholder or member would be considered a partner,
21 shareholder, or member for State law purposes in accordance
22 with Chapter 805 of the Illinois Compiled Statutes, and
23 whether or not those persons are allocated or allowed any
24 portion of the federal tax credit with respect to the
25 qualified development, or whether the allocation of the credit
26 under the terms of the agreement has substantial economic

1 effect, within the meaning of Section 704(b) of the Internal
2 Revenue Code, relating to determination of distributive share.
3 In the case of multiple tiers of pass-through entities, the
4 credit may be so allocated through any number of pass-through
5 entities on a pro rata basis or pursuant to an executed
6 agreement among the partners, members, or owners documenting
7 any alternative distribution method. Notwithstanding the
8 foregoing, no credit shall be passed through an entity that is
9 considered a disregarded entity for tax purposes. A qualified
10 taxpayer may claim a credit so long as its direct or indirect
11 interest in the qualified development is acquired prior to the
12 filing of its tax return claiming the credit. On or before
13 February 28th following each year of the credit period, the
14 owner must submit an allocation schedule certification to the
15 Department and the Department of Insurance detailing the
16 amount of credit allocated to each qualified taxpayer for the
17 applicable year and whether each qualified taxpayer intends to
18 apply the credit to income tax or insurance premium tax, or the
19 owner must notify the Department and the Department of
20 Insurance that it has assigned the duty of the allocation
21 schedule certification to its designee who must provide such
22 allocation schedule certification to the Department by the
23 deadline. Such allocation schedule certification may be
24 amended in the event the State credit eligibility statement
25 for a project is received after the deadline for filing the
26 allocation schedule certification. Any such amendment shall be

1 filed prior to any taxpayer attempting to claim tax credits
2 associated with the applicable State credit eligibility
3 statement. Each qualified taxpayer is allowed to claim its
4 allocated amount of credit subject to any restrictions set
5 forth in this Section.

6 (e) No credit may be allocated pursuant to this Act unless
7 the qualified development is the subject of a recorded
8 restrictive covenant requiring the development to be
9 maintained and operated as a qualified development; this
10 requirement for a recorded restrictive covenant may be
11 satisfied by the agreement for an extended low-income housing
12 commitment required for the federal tax credits as defined in
13 Section 42(h)(6)(B) of the federal Internal Revenue Code of
14 1986.

15 (f) If, during a taxable year, there is a determination
16 that no recorded restrictive covenant meeting the requirements
17 of subsection (e) was in effect as of the beginning of that
18 year, such determination shall not apply to any period before
19 that year and subsection (e) shall be applied without regard
20 to that determination if the failure is corrected within one
21 year from the date of the determination.

22 (g) The credit amount may be taken against the taxes
23 imposed by the Illinois Income Tax Act for each taxable year of
24 the credit period. The credit amount may be taken against the
25 taxes, penalties, fees, charges, and payments imposed by the
26 Illinois Insurance Code for each reporting period in the

1 credit period. Any credit amount that exceeds the tax due for a
2 taxable year may be carried forward as a tax credit against
3 payments due for up to 5 taxable years following the tax year
4 to which the credit relates and must be applied first to the
5 earliest reporting periods possible. Credits that are not
6 claimed may not be refunded to the qualified taxpayer.

7 (h) By January 15, 2022 and by January 15 of each year
8 thereafter, the Authority shall provide to the Department an
9 electronic file containing all data related to all State
10 credit eligibility statements issued during the preceding year
11 in the manner and form as provided by the Department.

12 Section 1-15. Recapture. If, under Section 42 of the
13 Internal Revenue Code of 1986, a portion of any federal tax
14 credit claimed with respect to a qualified development is
15 required to be recaptured during the first 10 years after a
16 project is placed in service, then the Authority shall provide
17 written notice, upon a form created by the Authority, to the
18 Department of the amount to be recaptured. The amount of
19 credit subject to recapture shall be proportionately equal to
20 the amount of the qualified development's federal tax credits
21 which are subject to recapture. The Department shall notify
22 the qualified taxpayer that claimed the credit of the amount
23 recaptured, and the qualified taxpayer subject to recapture
24 shall increase the qualified taxpayer's tax by the amount of
25 any credit wrongfully claimed in the tax year the qualified

1 taxpayer is notified of the recapture. Those adjustments shall
2 be made in the year the reduction in qualified basis is
3 identified.

4 Section 1-20. Filing requirements. An owner of a qualified
5 development that has received an allocation and each qualified
6 taxpayer claiming any portion of the credit must file with
7 their State tax returns a copy of the State credit eligibility
8 statement issued by the Authority for that qualified
9 development. A qualified taxpayer receiving an allocation of
10 credit through a pass-through entity shall attach to its State
11 tax return a copy of the Schedule K-1-P or other written
12 statement from the pass-through entity stating the portion of
13 the annual credit shown on the State credit eligibility
14 statement that is allocated to that partner, member or
15 shareholder for that taxable year. In addition, the owner of a
16 qualified development or its designee shall file a copy of the
17 allocation schedule certification prior to any tax return
18 being filed claiming a State credit for such qualified
19 development.

20 Section 1-25. Rules. The Illinois Housing Development
21 Authority and the Department, in consultation with each other,
22 shall adopt such rules as are necessary to carry out their
23 respective responsibilities under this Act.

1 Section 1-30. 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 1-35. 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
12 that have been allocated tax credits under this Act during
13 the allocation year and the total number of units
14 supported by each qualified development;

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

24 (3) provide housing market and demographic information
25 that demonstrates how the qualified developments supported

1 by the tax credits are addressing the need for affordable
2 housing within the communities they are intended to serve
3 as well as information about any remaining disparities in
4 the affordability of housing within those communities; and

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

12 Section 1-40. Exempt from automatic sunset. The credit
13 under this Act is exempt from the provisions of Section 250 of
14 the Illinois Income Tax Act.

15 Section 1-90. The Illinois Income Tax Act is amended by
16 adding Section 232 as follows:

17 (35 ILCS 5/232 new)

18 Sec. 232. Build Illinois Homes Tax Credit Act.

19 (a) For taxable years beginning on or after January 1,
20 2022, any eligible taxpayer with respect to a credit awarded
21 in accordance with the Build Illinois Homes Tax Credit Act
22 that is named on the allocation schedule certification for a
23 particular tax year is entitled to a credit against the taxes

1 imposed by subsections (a) and (b) of Section 201 as provided
2 in the Build Illinois Homes Tax Credit Act.

3 (b) The taxpayer shall attach a copy of the allocation
4 schedule certification and the State credit eligibility
5 certificate issued under the Build Illinois Homes Tax Credit
6 Act to the tax return on which the credits are to be claimed.

7 (c) If, during any taxable year, a taxpayer is notified of
8 a recapture of a credit previously claimed on a State income
9 tax return in accordance with the Build Illinois Homes Tax
10 Credit Act, the tax imposed under subsections (a) and (b) of
11 Section 201 for that taxpayer for that taxable year shall be
12 increased. The amount of the increase shall be determined by
13 (i) recomputing the Build Illinois Homes Tax Credit that would
14 have been allowed for the year in which the credit was
15 originally allowed by eliminating the recaptured amount from
16 such computation, and (ii) subtracting that recomputed credit
17 from the amount of credit previously allowed. No Build
18 Illinois Homes tax Credit shall be allowed with respect to any
19 credit subject to a recapture notice for any taxable year
20 ending after the issuance of a recapture notice.

21 (d) This Section is exempt from the provisions of Section
22 250.

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.