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HOUSE BILL 2913

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State of Washington

65th Legislature

2018 Regular Session

By Representatives McBride, Barkis, and Ryu

1 AN ACT Relating to creating a Washington affordable housing tax  
2 credit program; and adding a new chapter to Title 82 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this  
5 section apply throughout this chapter unless the context clearly  
6 requires otherwise.

7 (1) "Allocation certificate" means a statement issued by the  
8 commission certifying that a given development qualifies for the  
9 credit and specifying the amount of the credit allowed.

10 (2) "Commission" means the Washington state housing finance  
11 commission or any board, body, commission, department, or officer  
12 succeeding the principal functions of the commission or the entity to  
13 whom the powers conferred upon the commission are given by law.

14 (3) "Compliance period" means the period of fifteen years  
15 beginning with the first taxable year of the credit period.

16 (4) "Credit period" means the period of six taxable years  
17 beginning with the taxable year in which a qualified development is  
18 placed in service. If a qualified development is comprised of more  
19 than one building, the development is deemed to be placed in service  
20 in the taxable year during which the last building of the qualified  
21 development is placed in service.

1 (5) "Federal tax credit" means the federal low-income housing tax  
2 credit provided by Title 26 U.S.C. Sec. 42 of the federal internal  
3 revenue code, as amended, as of the effective date of this section.

4 (6) "Qualified allocation plan" means the qualified allocation  
5 plan adopted by the commission pursuant to Title 26 U.S.C. Sec. 42(m)  
6 of the federal internal revenue code of 1986, as amended, as of the  
7 effective date of this section.

8 (7) "Qualified basis" means the qualified basis of the qualified  
9 development as determined pursuant to Title 26 U.S.C. Sec. 42 of the  
10 federal internal revenue code of 1986, as amended, as of the  
11 effective date of this section.

12 (8) "Qualified development" means a "qualified low-income housing  
13 project," as that term is defined in Title 26 U.S.C. Sec. 42 of the  
14 federal internal revenue code of 1986, as amended, as of the  
15 effective date of this section, which is financed with tax-exempt  
16 bonds pursuant to Title 26 U.S.C. Sec. 42(i)(2) of the federal  
17 internal revenue code of 1986, as amended, as of the effective date  
18 of this section and which is located in the state of Washington and  
19 is determined by the commission to be eligible for a federal tax  
20 credit whether or not a federal tax credit is allocated with respect  
21 to said development.

22 (9) "Qualified taxpayer" means an individual, person, firm,  
23 corporation, or other entity that owns an interest, direct or  
24 indirect, in a qualified development and is subject to the taxes  
25 imposed by RCW 48.14.020 or 82.16.020.

26 (10) "Washington affordable housing tax credit" means the  
27 Washington affordable housing tax credit allowed pursuant to section  
28 2 of this act.

29 NEW SECTION. **Sec. 2.** CREDIT AGAINST TAX FOR LOW-INCOME HOUSING  
30 DEVELOPMENTS. (1) For tax years during the credit period, any  
31 qualified taxpayer is allowed a Washington affordable housing tax  
32 credit with respect to the taxes imposed by RCW 48.14.020 or  
33 82.16.020, as provided in this chapter. In no event may any qualified  
34 taxpayer claim a Washington affordable housing tax credit greater  
35 than forty percent of the tax due pursuant to RCW 48.14.020 or  
36 82.16.020, prior to application of any tax credits.

37 (2) The commission may allocate a credit to the owner of a  
38 qualified development by issuing to the owner an allocation  
39 certificate. The commission may determine the time at which such

1 allocation certificate is issued. The credit must be in an amount  
2 determined by the commission, subject to the following guidelines:

3 (a) The credit is necessary for the financial feasibility of such  
4 development;

5 (b)(i) In no event may a credit exceed the amount of federal tax  
6 credit awarded to the qualified development;

7 (ii) The Washington affordable housing tax credit must be earned  
8 over the six-year credit period notwithstanding the fact that the  
9 federal tax credit is earned over ten years;

10 (iii) The annual Washington affordable housing tax credit may  
11 exceed the annual federal tax credit, if the total Washington  
12 affordable housing tax credit earned over six years is not greater  
13 than the federal credit period earned over ten years;

14 (c) All allocations must be made pursuant to the qualified  
15 allocation plan; and

16 (d) The aggregate sum of credits allocated annually may not  
17 exceed the limits provided in subsection (6) of this section.

18 (3) If an owner of a qualified development receiving an  
19 allocation of a credit is a partnership, limited liability company, S  
20 corporation, or similar pass-through entity, the owner may allocate  
21 the credit among its partners, shareholders, members, or other  
22 constituent taxpayers in any manner agreed to by such persons and, in  
23 the case of multiple tiers of pass-through entities, the credit may  
24 be so allocated through any number of pass-through entities in any  
25 manner agreed by the owners of such pass-through entities, none of  
26 which may be considered a transfer. The owner must certify to the  
27 department the amount of credit allocated to each constituent  
28 taxpayer or the owner must notify the department that it has assigned  
29 the duty of certification to one such constituent taxpayer, who must  
30 provide such notification to the department. Each constituent  
31 taxpayer is allowed to claim such amount subject to any restrictions  
32 set forth in this section.

33 (4) No credit may be allocated pursuant to this section unless  
34 the qualified development is the subject of a recorded restrictive  
35 covenant requiring the development to be maintained and operated as a  
36 qualified development, and is in accordance with the accessibility  
37 and adaptability requirements of the federal tax credits and Title  
38 VIII of the civil rights act of 1968, as amended by the fair housing  
39 amendments act of 1988, for a period of fifteen taxable years, or

1 such longer period as may be agreed to between the commission and the  
2 owner, beginning with the first taxable year of the credit period.

3 (5) The allocated credit amount may be taken against the taxes  
4 imposed by RCW 48.14.020 or 82.16.020 for each taxable year of the  
5 credit period. Any amount of credit that exceeds the tax due for a  
6 taxable year may be carried forward as a tax credit against  
7 subsequent years' income tax liability up to eleven tax years  
8 following the tax year in which the allocation was made and must be  
9 applied first to the earliest years possible. Any amount of the  
10 credit that is not used may not be refunded to the taxpayer.

11 (6) During each calendar year, the commission may allocate a  
12 credit, the full amount of which may be claimed against the taxes  
13 imposed by this chapter for each taxable year of the six-year credit  
14 period. The aggregate amount of all credits allocated by the  
15 commission in each calendar year may not exceed:

16 (a) Forty-two million dollars for credits allocated pursuant to  
17 subsection (1) of this section, seven million dollars of such credit  
18 to be earned per year for each of the six years in the credit period;

19 (b) The amount of unallocated credits, if any, for the preceding  
20 calendar years; and

21 (c) The amount of any credit recaptured or otherwise returned to  
22 the commission in the calendar year.

23 (7) Unless otherwise provided in this section or the context  
24 clearly requires otherwise, the commission must determine eligibility  
25 for a credit and allocate credits in accordance with the standards  
26 and requirements set forth in Title 26 U.S.C. Sec. 42 of the federal  
27 internal revenue code of 1986, as amended, as of the effective date  
28 of this section; however, any combination of federal tax credits and  
29 Washington affordable housing tax credits allowed must be the least  
30 amount necessary to ensure the financial feasibility of a qualified  
31 development.

32 NEW SECTION. **Sec. 3.** RECAPTURE. If under Title 26 U.S.C. Sec.  
33 42 of the internal revenue code, as amended, as of the effective date  
34 of this section, a portion of any federal tax credits taken on a  
35 qualified project is required to be recaptured during the first six  
36 years after a project is placed in service, the taxpayer claiming  
37 Washington affordable housing tax credits with respect to such  
38 project is also required to recapture a portion of such credits. The  
39 amount of Washington affordable housing tax credits subject to

1 recapture must be proportionately equal to the amount of federal tax  
2 credits subject to recapture. In the event that recapture of any  
3 Washington affordable housing tax credits is required in any tax  
4 year, the return submitted for that tax year to the department must  
5 include the proportion of credit required to be recaptured, the  
6 identity of each taxpayer subject to the recapture, and the amount of  
7 credit previously allocated to such taxpayer.

8 NEW SECTION. **Sec. 4.** FILING REQUIREMENTS. An owner of a  
9 qualified development to which a credit has been allocated and each  
10 qualified taxpayer to which such owner has allocated a portion of  
11 said credit, if any, must file with their state tax return a copy of  
12 the allocation certificate issued by the commission with respect to  
13 such development and a copy of the certification to the department as  
14 to the allocation of the credit among the qualified taxpayers having  
15 ownership interests in such development.

16 NEW SECTION. **Sec. 5.** RULES. The commission and the department,  
17 in consultation with each other, must adopt such rules as are  
18 necessary to carry out responsibilities under this chapter.

19 NEW SECTION. **Sec. 6.** COMPLIANCE MONITORING. The commission, in  
20 consultation with the department, must monitor and oversee compliance  
21 with the provisions of this section and must report specific  
22 occurrences of noncompliance to the department.

23 NEW SECTION. **Sec. 7.** REPORT TO LEGISLATURE. (1) For each  
24 allocation year, the commission must, by December 31st of that year,  
25 in compliance with RCW 43.01.036, provide a written report to the  
26 appropriate committees of the legislature and must make the report  
27 available to the public.

28 (2) With respect to Washington affordable housing tax credits  
29 issued pursuant to this chapter, the report must:

30 (a) Specify the number of qualified developments that have been  
31 allocated such tax credits during the allocation year and the total  
32 number of units supported by each development;

33 (b) Describe each qualified development that has been allocated  
34 such credits including, without limitation, the geographic location  
35 of the development, the household type and any specific demographic  
36 information available about residents intended to be served by the

1 development, the income levels intended to be served by the  
2 development, and the rents or set-asides authorized for each  
3 development; and

4 (c) Provide housing market and demographic information that  
5 demonstrates how the qualified developments supported by the tax  
6 credits are addressing the need for affordable housing within the  
7 communities they are intended to serve as well as information about  
8 any remaining disparities in the affordability of housing within  
9 those communities.

10 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act  
11 constitute a new chapter in Title 82 RCW.

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