

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S2/6/01 S3/20/01

A Bill

SENATE BILL 347

5 By: *Senators Riggs, Gwatney*
6
7

For An Act To Be Entitled

9 AN ACT TO REPEAL THE AFFORDABLE NEIGHBORHOOD
10 HOUSING TAX CREDIT ACT OF 1997; TO AMEND ARKANSAS
11 CODE 26-51-1702 PERTAINING TO LOW INCOME HOUSING
12 TAX CREDITS; AND FOR OTHER PURPOSES.
13

Subtitle

14 AN ACT TO REPEAL THE AFFORDABLE
15 NEIGHBORHOOD HOUSING TAX CREDIT ACT OF
16 1997; TO AMEND ARKANSAS CODE 26-51-1702
17 PERTAINING TO LOW INCOME HOUSING TAX
18 CREDITS.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 15, Chapter 5, Subchapter 13 is
25 repealed.

26 ~~15-5-1301. Title.~~

27 ~~This subchapter shall be known and may be cited as the "Affordable~~
28 ~~Neighborhood Housing Tax Credit Act of 1997".~~

29
30 ~~15-5-1302. Definitions.~~

31 ~~As used in this subchapter, unless the context clearly requires~~
32 ~~otherwise, the following words and phrases shall mean:~~

33 ~~(1) "Affordable housing assistance activities" shall mean money,~~
34 ~~real, or personal property expended or devoted to the construction or~~
35 ~~rehabilitation of affordable housing units developed by or in conjunction with~~
36 ~~any governmental unit or not for profit corporation, such costs to include~~

1 ~~related site and infrastructure costs and community and supportive services;~~

2 ~~(2) "Affordable housing unit" shall mean:~~

3 ~~(A) For purposes of rental units, a housing unit or units~~
4 ~~which have restricted rents that do not exceed thirty percent (30%) of median~~
5 ~~income for the metropolitan area or county in which the project is located~~
6 ~~for:~~

7 ~~(i) At least forty percent (40%) of its units, which~~
8 ~~must be occupied by persons or families having incomes of sixty percent (60%)~~
9 ~~or less of the median income for the metropolitan area or county in which the~~
10 ~~project is located; or~~

11 ~~(ii) For at least twenty percent (20%) of its units,~~
12 ~~which must be occupied by persons or families having incomes of fifty percent~~
13 ~~(50%) or less of the median income for the metropolitan area or county in~~
14 ~~which the project is located;~~

15 ~~(B) In the case of owner-occupied units, a housing unit~~
16 ~~which is sold to a purchaser:~~

17 ~~(i) Whose family income does not exceed one hundred~~
18 ~~fifteen percent (115%) of the median income, adjusted for family size, of the~~
19 ~~county of SMSA at the time of the initial purchase contract;~~

20 ~~(ii) Who has not owned a home for three (3) years~~
21 ~~prior to initial occupancy; and~~

22 ~~(iii) Who will occupy the housing unit as the~~
23 ~~family's principal residence;~~

24 ~~(C) In the case of rental units, the cost to the occupant~~
25 ~~shall be considered the amount of the gross rent; and~~

26 ~~(D) For purposes of owner-occupied units, the Arkansas~~
27 ~~Development Finance Authority shall establish the requirements for an~~
28 ~~affordable housing unit to be consistent with guidelines established under the~~
29 ~~federal HOME program;~~

30 ~~(3) "Authority" shall mean the Arkansas Development Finance~~
31 ~~Authority or its successor agency;~~

32 ~~(4) "Business firm" shall mean:~~

33 ~~(A) A person;~~

34 ~~(B) A general or limited partnership;~~

35 ~~(C) A partner in such partnership;~~

36 ~~(D) A corporation;~~

1 ~~(E) A limited liability company or a member thereof;~~

2 ~~(F) A shareholder in an S corporation subject to the state~~
3 ~~income tax imposed by the provisions of §§ 26-51-101—26-51-1510;~~

4 ~~(G) An insurance company paying an annual tax on its gross~~
5 ~~premium receipts in this state; or~~

6 ~~(H) A financial institution paying income taxes to the~~
7 ~~State of Arkansas;~~

8 ~~(5) "Director" shall mean the Director of the Department of~~
9 ~~Finance and Administration;~~

10 ~~(6) "Governmental unit" shall mean:~~

11 ~~(A) The State of Arkansas;~~

12 ~~(B) Any county, municipality, or other political~~
13 ~~subdivision of the State of Arkansas; and~~

14 ~~(C) Any agency, board, commission, or instrumentality of~~
15 ~~any of the foregoing;~~

16 ~~(7) "Neighborhood organization" shall mean any organization~~
17 ~~performing community services or economic development activities in the State~~
18 ~~of Arkansas and:~~

19 ~~(A) Holding a ruling from the Internal Revenue Service of~~
20 ~~the Department of the Treasury that the organization is exempt from income~~
21 ~~taxation under the provisions of the Internal Revenue Code;~~

22 ~~(B) Incorporated in the State of Arkansas as a not-for-~~
23 ~~profit corporation; or~~

24 ~~(C) Designated as a community development corporation by~~
25 ~~the United States Government under the provisions of Title VII of the Economic~~
26 ~~Opportunity Act of 1964; and~~

27 ~~(8) "S corporation" shall mean a corporation described in §~~
28 ~~1361(a)(1) of the United States Internal Revenue Code of 1986.~~

29

30 ~~15-5-1303. Affordable housing assistance activities and affordable~~
31 ~~housing units—Business firms proposing to provide—Procedure for approval~~
32 ~~and tax credit.~~

33 ~~(a) Any business firm which engages in providing affordable housing~~
34 ~~assistance activities in the State of Arkansas shall receive a tax credit as~~
35 ~~provided in § 15-5-1304 if the Arkansas Development Finance Authority or its~~
36 ~~delegate approves a proposal submitted by one (1) or more business firms for~~

1 ~~the provision of affordable housing units.~~

2 ~~(b) The proposal shall set forth:~~

3 ~~(1) A program of affordable housing to be conducted;~~

4 ~~(2) The location and number of affordable housing units;~~

5 ~~(3) The neighborhood area to be served;~~

6 ~~(4) Why the program is needed;~~

7 ~~(5) The time period for which affordable housing units shall be~~
8 ~~provided;~~

9 ~~(6) The estimated amount to be invested in the program;~~

10 ~~(7) Plans for implementing the program; and~~

11 ~~(8) A list of the business firms proposing to provide affordable~~
12 ~~housing assistance activities which are a part of the proposal.~~

13 ~~(c) In the case of rental units, all proposals approved by the~~
14 ~~authority shall require a land use restriction agreement stating the provision~~
15 ~~of affordable housing on said property for a time period deemed reasonable by~~
16 ~~the authority.~~

17 ~~(d)(1) In the case of owner-occupied units, all proposals approved by~~
18 ~~the authority shall require a land use restriction agreement for a time period~~
19 ~~deemed reasonable by the authority requiring any subsequent owner, except a~~
20 ~~lender with a security interest in the property, to be an owner-occupant whose~~
21 ~~income at the time of acquisition is at or below the level described in § 15-~~
22 ~~5-1302 of this subchapter, and further requiring that the acquisition price to~~
23 ~~any subsequent owner shall not exceed by more than a five percent (5%) annual~~
24 ~~appreciation the acquisition price to the original, eligible owner at the time~~
25 ~~tax credits are first claimed.~~

26 ~~(2) The restriction shall be approved by the property owner and~~
27 ~~shall be binding on any subsequent owner of the property unless otherwise~~
28 ~~approved by the authority.~~

29 ~~(e) In approving a proposal, the authority may authorize the use of tax~~
30 ~~credits by one (1) or more of the business firms listed in the proposal and~~
31 ~~shall establish specific requirements regarding the degree of completion of~~
32 ~~affordable housing assistance activities necessary to be eligible for tax~~
33 ~~credits provided under this section.~~

34 ~~(f) If, in the opinion of the authority or its delegate, a business~~
35 ~~firm's investment can be made more consistently with the purposes of this~~
36 ~~section through contributions to a neighborhood organization, tax credits may~~

1 ~~be allowed as provided in this section.~~

2 ~~(g) The authority or its delegate is hereby authorized to promulgate~~
3 ~~rules and regulations for establishing criteria for evaluating such proposals~~
4 ~~by business firms for approval or disapproval, for establishing housing~~
5 ~~priorities for approval or disapproval of such proposals by business firms,~~
6 ~~and for the certification of eligibility for tax credits authorized under this~~
7 ~~section.~~

8 ~~(h) The decision of the authority or its delegate to approve or~~
9 ~~disapprove a proposal pursuant to this section shall be in writing, and if~~
10 ~~approved, the maximum credit allowable to the business firm shall be stated.~~

11 ~~(i) A copy of the decision of the authority or its delegate shall be~~
12 ~~transmitted to the Director of the Department of Finance and Administration~~
13 ~~and to the Governor.~~

14 ~~(j) A copy of the certification approved by the authority and a~~
15 ~~statement of the total amount of credits approved by the authority, the amount~~
16 ~~of credits previously taken by the taxpayer, and the amount being claimed for~~
17 ~~the current tax year shall be filed in a manner and form designated by the~~
18 ~~director for any tax year in which a tax credit is being claimed.~~

19
20 ~~15-5-1304. Tax credits authorized—Amount allowed annually—Exceeded~~
21 ~~when—Upper limits set—Carry over permitted.~~

22 ~~(a)(1) For proposals approved under § 15-5-1303 of this subchapter, the~~
23 ~~amount of the tax credit shall not exceed thirty percent (30%) of the total~~
24 ~~amount invested in affordable housing assistance activities by a business~~
25 ~~firm.~~

26 ~~(2) Any tax credit not used in the period for which the credit~~
27 ~~was approved may be carried forward to any of the five (5) subsequent taxable~~
28 ~~years until the full credit has been allowed.~~

29 ~~(3) The total amount of tax credits granted for programs approved~~
30 ~~under § 15-5-1303 of this subchapter shall not exceed seven hundred fifty~~
31 ~~thousand dollars (\$750,000) in any taxable year.~~

32 ~~(4) For taxable year 1997, at least one half (1/2) of the tax~~
33 ~~credits shall be designated by the Arkansas Development Finance Authority to~~
34 ~~the affordable housing assistance activities in counties declared disaster~~
35 ~~areas by the Governor.~~

36 ~~(b)(1) For any year during the compliance period indicated in the land-~~

1 use restriction agreement, the owner of the affordable housing rental units
2 for which a credit is being claimed shall certify to the authority that all
3 tenants renting claimed units are income eligible for the affordable housing
4 units and that the rentals for each claimed unit are affordable in compliance
5 with the provisions of ~~§ 15-5-1302.~~

6 ~~(2) The authority is authorized, in its discretion, to audit the~~
7 ~~records and the accounts of the owner to verify said certification.~~

8 ~~(c)(1) In the case of owner-occupied affordable housing units, the~~
9 ~~qualifying owner-occupant, before the end of the first year in which credits~~
10 ~~are claimed, shall certify to the authority that the occupant is income~~
11 ~~eligible during the preceding two (2) years and at the time of the initial~~
12 ~~purchase contract, but not thereafter.~~

13 ~~(2) The qualifying owner-occupant shall further certify to the~~
14 ~~authority before the end of the first year in which credits are claimed that~~
15 ~~during the compliance period indicated in the land use restriction agreement,~~
16 ~~the cost of the affordable housing unit to the occupant for the claimed unit~~
17 ~~can reasonably be projected to be in compliance with the provisions of § 15-5-~~
18 ~~1302.~~

19 ~~(3) Any succeeding owner-occupant acquiring the affordable~~
20 ~~housing unit during the compliance period indicated in the land use~~
21 ~~restriction agreement shall make the same certification.~~

22
23 ~~15-5-1305. Rules and regulations.~~

24 ~~The Director of the Department of Finance and Administration and the~~
25 ~~Arkansas Development Finance Authority shall promulgate rules and regulations~~
26 ~~necessary to administer the provisions of this subchapter. No rule or portion~~
27 ~~of a rule promulgated under the authority of this subchapter shall become~~
28 ~~effective until it has been approved by the director in accordance with the~~
29 ~~Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

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31
32 SECTION 2. Arkansas Code 26-51-1702 is amended to read as follows:

33 26-51-1702. Allowance and calculation of tax credit.

34 (a) A taxpayer owning an interest in a qualified project shall be
35 allowed a state tax credit, to be termed the Arkansas low income housing tax
36 credit, if the authority issues an eligibility statement for that project. For

1 any taxpayer which is, for state income tax purposes, taxed as a partnership
2 or an S corporation, the tax credits allocated to the taxpayer shall be
3 allocated to each partner, member or shareholder of the taxpayer in accordance
4 with the provisions of the articles of incorporation, bylaws, partnership
5 agreement, operating agreement or other agreement setting forth such
6 allocation.

7 (b) The Arkansas low income housing tax credit available to a qualified
8 project shall be *calculated by multiplying* an amount equal to the federal low
9 income housing tax credit for a qualified project for a federal tax period, *by*
10 ~~twenty percent (20%)~~ up to one hundred percent (100%) and such amount shall be
11 subtracted from the amount of state income or premium tax otherwise due from
12 the taxpayer for the same tax period.

13 (c) The Arkansas low income housing tax credit shall be taken against
14 the state income or premium taxes due from the taxpayer. The credit authorized
15 by this subchapter shall not be refundable. Any amount of credit that exceeds
16 the tax due for a taxable year may be carried forward to any of the five (5)
17 ~~subsequent taxable years or carried forward to any of the five (5) subsequent~~
18 ~~taxable years.~~

19 (d) All or any portion of the Arkansas low income housing tax credits
20 may be speciallly allocated to parties who are eligible under the provisions of
21 subsection (a) of this section. An owner of a qualified project shall certify
22 to the director the amount of the Arkansas low income housing tax credit
23 allocated to each taxpayer.

24 (e) In the event that recapture of Arkansas low income housing tax
25 credits is required pursuant to subsection (b) of § 26-51-1703 of this
26 subchapter, any statement submitted to the director as provided in this
27 section shall include the proportion of the Arkansas low income housing tax
28 credit required to be recaptured, the identity of each taxpayer subject to the
29 recapture and the amount of Arkansas low income housing tax credit previously
30 allocated to such taxpayer.

31 (f) *The total amount of tax credit ~~granted~~ allocated under this*
32 *subchapter shall not exceed ~~two hundred fifty thousand dollars (\$250,000)~~ one*
33 *million dollars (\$1,000,000) in any taxable year.*

34 /s/ Gwatney
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