

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 911

Short Title: Private Sector Affordable Housing Act. (Public)

Sponsors: Representative Brody.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance

April 26, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE PRIVATE SECTOR AFFORDABLE HOUSING ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 105 of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 3M.

7 "Affordable Housing Tax Credits.

8 **§ 105-129.120. Credit for affordable housing awarded a federal credit.**

9 (a) Credit. – A taxpayer who claims for the taxable year federal income tax credit under
10 section 42 of the Code with respect to qualified North Carolina housing is allowed a credit
11 under this Article equal to the amount of federal credit the taxpayer took for the taxable year
12 under section 42 of the Code.

13 (b) Tax Election. – The credit allowed in this section is allowed against the income
14 taxes levied in Article 4 of this Chapter or the gross premiums tax levied in Article 8B of this
15 Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing
16 the return on which the first installment of the credit is claimed. This election is binding. Any
17 carryforwards of the credit must be claimed against the same tax.

18 (c) Limitations. – The following limitations apply to the credit allowed in this section:

19 (1) The credit allowed in this section may not exceed fifty percent (50%) of the
20 tax against which it is claimed for the taxable year, reduced by the sum of all
21 other credits made by or on behalf of the taxpayer. This limitation applies to
22 the cumulative amount of credit, including carryforwards, claimed by the
23 taxpayer under this section against each tax for the taxable year. Any unused
24 portion of the credit may be carried forward for the succeeding five years.

25 (2) No credit may be allowed in this section for any project receiving a loan
26 through the Workforce Housing Loan Program from the North Carolina
27 Housing Finance Agency for qualified North Carolina low-income housing
28 development, as defined in Section 31.1 of S.L. 2014-100.

29 (d) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and
30 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may
31 allocate the credit among any of its owners in its discretion as long as an owner's adjusted basis
32 in the pass-through entity, as determined under the Code at the end of the taxable year in which
33 the federal credit is first claimed, is at least forty percent (40%) of the amount of credit
34 allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they
35 had qualified for the credit directly. A pass-through entity and its owners must include with



1 their tax returns for every taxable year in which an allocated credit is claimed a statement of the
2 allocation made by the pass-through entity and the allocation that would have been required
3 under G.S. 105-131.8 or G.S. 105-269.15.

4 (e) Qualifying Buildings. – As used in this section, the term "qualified North Carolina
5 housing" means a qualified building for which a federal credit was allowed under section 42 of
6 the Code and to which one or more of the following apply:

7 (1) The building is used for senior and disabled housing allowing home health
8 and supporting services, including projects meeting the requirements of
9 42 U.S.C. § 3607.

10 (2) The aggregate basis of the building and any land on which it is located is
11 financed at least fifty percent (50%) by federally tax-exempt bonds.

12 (3) The building is located in an area declared a major disaster under
13 42 U.S.C. § 5121.

14 (f) Forfeiture for Disposition. – If the taxpayer is required to recapture all or part of a
15 federal credit under that section 42 of the Code with respect to qualified North Carolina
16 housing, the taxpayer must report the recapture event to the Secretary. The taxpayer forfeits the
17 corresponding part of the credit allowed under this section with respect to that qualified North
18 Carolina housing. If the credit was allocated among the owners of a pass-through entity, the
19 forfeiture applies to the owners in the same proportion that the credit was allocated.

20 (g) Liability From Forfeiture. – A taxpayer that forfeits a credit under this section is
21 liable for all past taxes avoided as a result of the credit plus interest at the rate established under
22 G.S. 105-241.21, computed from the date the taxes would have been due if the credit had not
23 been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A
24 taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due
25 date is subject to the penalties provided in G.S. 105-236.

26 **"§ 105-129.121. Substantiation.**

27 A taxpayer allowed a credit under this Article must maintain and make available for
28 inspection any information or records required by the Secretary of Revenue. The burden of
29 proving eligibility for a credit and the amount of the credit rests upon the taxpayer.

30 **"§ 105-129.122. Report.**

31 The Department must include in the economic incentives report required by G.S. 105-256
32 the following information itemized by taxpayer:

33 (1) The number of taxpayers that took the credit allowed in this Article.

34 (2) The location of each qualified North Carolina housing for which a credit was
35 taken.

36 (3) The total cost to the General Fund of the credits taken."

37 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
38 2018.