

Senate Bill No. 448–Committee on Revenue
and Economic Development

CHAPTER.....

AN ACT relating to taxation; providing for the issuance of transferable tax credits to a project for the acquisition, development, construction, improvement, expansion, reconstruction or rehabilitation of low-income housing; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing federal law establishes a federal income tax credit in an amount equal to a certain percentage of the costs of constructing a low-income housing project. Under existing federal law, to be eligible for this credit, a project is required to meet certain criteria and be a residential rental project for which: (1) 20 percent or more of the residential units in the project are restricted in the amount of rent charged to occupants of the units and occupied by individuals whose income is 50 percent or less of the median gross income for the area in which the project is located; or (2) 40 percent or more of the residential units in the project are restricted in the amount of rent charged to occupants of the unit and occupied by individuals whose income is 60 percent or less of the median gross income for the area in which the project is located. (26 U.S.C. § 42) Existing state law and regulations: (1) designate the Housing Division of the Department of Business and Industry as the state agency that allocates and distributes the federal low-income housing tax credit; (2) require the Housing Division to develop and publish a qualified allocation plan that sets forth the priorities of this State for the allocation of federal low-income housing tax credits and the criteria for selecting applicants to receive an allocation of federal low-income housing tax credits; and (3) require the Housing Division to allocate and distribute federal low-income housing tax credits to applicants who comply with the qualified allocation plan and qualify to receive such credits in accordance with the plan. (NRS 319.145; NAC 319.951-319.998)

This bill authorizes the Housing Division of the Department of Business and Industry to issue transferable tax credits that are authorized to be taken against certain state taxes to the sponsor of a project for the acquisition, development, construction, improvement, expansion, reconstruction or rehabilitation of low-income housing, as defined by existing federal law. **Section 9** of this bill authorizes the sponsor of such a project to apply on behalf of the project for the issuance of transferable tax credits. **Section 9** further authorizes the Housing Division to approve such an application if the project sponsor complies with the requirements of the qualified allocation plan for the allocation and distribution of federal low-income housing tax credits and a declaration setting forth the applicable restrictions on the rent charged to occupy a unit in the project and other conditions for the issuance of transferable tax credits has been recorded in the office of the county recorder of the county in which the project is located. Under **section 9**, the transferable tax credits are awarded based on the amount of transferable tax credit threshold points awarded to a project and in accordance with the procedure set forth in the qualified allocation plan. The transferable tax credits authorized by **section 9** may be applied to: (1) the excise tax on banks and payroll taxes imposed by chapters 363A and 363B of NRS; (2) the gaming license fees imposed by the provisions of NRS 463.370; (3) the general tax on insurance premiums imposed by chapter 680B of NRS; or (4) any combination of such taxes and fees.



Section 10 of this bill limits to \$10,000,000 the amount of transferable tax credits which the Housing Division is authorized to approve in each fiscal year and prohibits the Housing Division from approving applications and issuing transferable tax credits for any fiscal year beginning on or after July 1, 2023. **Section 10** also provides that if the Housing Division determines that approval of an application that would cause the amount of transferable tax credits issued by the Housing Division in a fiscal year is necessary to ensure the maximum development of affordable housing in this State through the issuance of transferable tax credits, the Housing Division is authorized to approve the application unless approval of the application would cause the amount of transferable tax credits approved for the fiscal year to exceed \$13,000,000. If the Housing Division approves more than \$10,000,000 of transferable tax credits in a fiscal year, the Housing Division is required to reduce the amount of transferable tax credits authorized to be approved in the next fiscal year by the amount of transferable tax credits approved in excess of \$10,000,000 in the previous fiscal year. Under **section 10**, if less than \$10,000,000 of transferable tax credits are approved in any fiscal year, the remaining amount of transferable tax credits carries forward to any fiscal year ending on or before June 30, 2023.

Section 11 of this bill requires the project sponsor to repay any portion of transferable tax credits to which the project sponsor is not entitled if the Housing Division determines that the project sponsor becomes ineligible for the credits or is found to have violated a restriction or condition set forth in the declaration of restrictive covenants and conditions recorded for the project. **Section 12** of this bill requires the Housing Division to make and submit reports to the Legislature concerning transferable tax credits provided to a project pursuant to this bill.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 360 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. *As used in sections 2 to 12, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Declaration of restrictive covenants and conditions” means an agreement between the Division and a project sponsor that sets forth the applicable restrictions concerning rent for a project and any other conditions upon which transferable tax credits are issued to the project sponsor by the Division pursuant to sections 2 to 12, inclusive, of this act.*

Sec. 4. *“Division” means the Housing Division of the Department of Business and Industry.*



Sec. 5. *“Federal low-income housing tax credit” means the credit or reduction in liability for federal income taxes that is awarded pursuant to 26 U.S.C. § 42.*

Sec. 6. *“Project” means a project for the acquisition, development, construction, improvement, expansion, reconstruction or rehabilitation of a qualified low-income housing project, as defined in 26 U.S.C. § 42(g), located in this State.*

Sec. 7. *“Project sponsor” means a person who acquires an ownership interest in a project and is designated by the participants in the project to apply for a certificate of eligibility for transferable tax credits pursuant to section 9 of this act.*

Sec. 8. *“Qualified allocation plan” means the plan established by the Division pursuant to NRS 319.145 for allocating federal low-income housing tax credits.*

Sec. 9. 1. *On behalf of a project, the project sponsor may apply to the Division for a certificate of eligibility for transferable tax credits which may be applied to:*

- (a) Any tax imposed by chapter 363A or 363B of NRS;*
- (b) The gaming license fees imposed by the provisions of NRS 463.370;*
- (c) Any tax imposed by chapter 680B of NRS; or*
- (d) Any combination of the fees and taxes described in paragraphs (a), (b) and (c).*

2. *To apply for a certificate of eligibility for transferable tax credits, the project sponsor must:*

- (a) Submit an application on a form prescribed by the Division; and*
- (b) Comply with the requirements to obtain an allocation of federal low-income housing tax credits which are set forth in the qualified allocation plan.*

3. *The Division shall:*

(a) Review each application for a certificate of eligibility for transferable tax credits submitted pursuant to subsection 2 and any supporting documents to determine whether the requirements for eligibility for a reservation of transferable tax credits are met and the amount of transferable tax credit threshold points awarded to the project;

(b) Determine the amount of transferable tax credits for which the project may be eligible, which amount must equal the amount determined by the Division to be necessary to make the project financially feasible after considering all other sources of financing for the project; and



(c) Reserve the amount of transferable tax credits for which each project is determined to be eligible pursuant to paragraph (b) in the order of the amount of transferable tax credit threshold points awarded to each such project pursuant to paragraph (a) until a reservation is made for each project or the amount of transferable credits reserved for the fiscal year is equal to the amount of transferable tax credits which the Division is authorized to approve for the fiscal year pursuant to section 10 of this act, whichever occurs first. If the amount of transferable tax credits reserved for the fiscal year reaches the amount of transferable tax credits which the Division is authorized to approve for the fiscal year pursuant to section 10 of this act before each eligible project is reserved the full amount of transferable tax credits for which it is determined to be eligible pursuant to paragraph (b), the Division may take any action that the Division determines will ensure the maximum development of affordable housing in this State, including, without limitation, proportionally reducing the reservation of each project for which transferable tax credits are reserved or reserving for the last project to receive a reservation of transferable tax credits an amount of transferable tax credits that is less than the full amount of transferable tax credits for which the project was determined to be eligible pursuant to paragraph (b).

4. If the Division reserves transferable tax credits for a project pursuant to subsection 3, the Division shall provide written notice of the reservation which identifies the amount of the tax credits reserved for the project to:

- (a) The project sponsor;*
- (b) The Department;*
- (c) The Nevada Gaming Control Board;*
- (d) The Office of Finance; and*
- (e) The Fiscal Analysis Division of the Legislative Counsel Bureau.*

5. The Division:

(a) Shall terminate a reservation of transferable tax credits if the project for which the reservation is awarded is not closed within the period specified in paragraph (a) of subsection 6 unless, before the expiration of that period, the Division receives from the project sponsor a written request for an extension of not more than 45 days. The Division may grant only one extension pursuant to this paragraph and, if the project is not closed before the expiration of the extension period, the Division must terminate the reservation of transferable tax credits. A request for an extension



submitted pursuant to this paragraph must be accompanied by proof satisfactory to the Division that:

(1) The requirements for financing the project have been substantially completed;

(2) The delay in closing was the result of circumstances that could not have been anticipated by and were outside the control of the project sponsor at the time the application was submitted by the project sponsor; and

(3) The project will be closed not later than 45 days after the Division receives the request.

(b) May terminate a reservation of transferable tax credits if the Division determines that any event, circumstance or condition occurs for which a reservation of federal low-income housing tax credits may be terminated. If transferable tax credits are terminated pursuant to this paragraph, the Division may issue a reservation for the amount of transferable tax credits terminated to other projects eligible for transferable tax credits in the order of the amount of transferable tax credit threshold points awarded to each such project pursuant to paragraph (a) of subsection 3.

6. Except as otherwise provided in this section, to be issued transferable tax credits:

(a) Not later than 270 days after the Division provides written notice of the reservation of transferable tax credits pursuant to subsection 4, the project sponsor must demonstrate to the Division that the project has been closed by providing proof satisfactory to the Division that the project sponsor has:

(1) Purchased and holds title in fee simple to the project site in the name of the project sponsor.

(2) Entered into a written agreement with a contractor who is licensed in this State to begin construction.

(3) Obtained adequate financing for the construction of the project. The applicant must provide written commitments or contracts from third parties.

(4) Executed a written commitment for a loan for permanent financing for the construction of the project in an amount that ensures the financial feasibility of the project. The commitment may be subject to the condition that the construction is completed and the project is appraised for an amount sufficient to justify the loan in accordance with the requirements of the lender for credit. If the project is a rural development project that receives loans or grants from the United States Department of Agriculture, the applicant must provide a form approved by the Division that indicates that money has been obligated for the



construction of the project before the expiration of the period. An advance of that money is not required before the expiration of the period.

(b) Upon completion of the project, the project sponsor must submit to the Division a final application for transferable tax credits on a form provided by the Division, a certification of costs on a form provided by the Division and such other information as the Division deems necessary to determine whether the project qualifies for the issuance of transferable tax credits. Upon receipt of a final application pursuant to this paragraph, the Division shall complete a review of the project, the project sponsor and the certification of costs. If, after such review, the Division determines that the project complies with the requirements upon which transferable tax credits were reserved pursuant to this section and a declaration of restrictive covenants and conditions has been recorded in the office of the county recorder for the county in which the project is located:

(1) The Division shall:

(I) Determine the appropriate amount of transferable tax credits for the project, which must be the amount the Division determines is necessary to make the project financially feasible after all other sources of funding are allocated and paid toward the final cost of the project indicated in the certification of costs and may not exceed the amount of transferable tax credits reserved for the project pursuant to this section; and

(II) Notify the project sponsor that the transferable tax credits will be issued;

(2) Within 30 days after the receipt of the notice, the project sponsor shall make an irrevocable declaration of the amount of transferable tax credits that will be applied to each fee or tax set forth in subsection 1, thereby accounting for all of the credits which will be issued; and

(3) Upon receipt of the declaration described in subparagraph (2), issue transferable tax credits to the project sponsor in the amount approved by the Division. The project sponsor shall notify the Division upon transferring any transferable tax credits. The Division shall notify the Department of Taxation, the Office of Finance, the Fiscal Analysis Division of the Legislative Counsel Bureau and the Nevada Gaming Control Board of all transferable tax credits issued, segregated by each fee or tax set forth in subsection 1, and of all transferable tax credits transferred, segregated by each fee or tax set forth in subsection 1.



7. *The project sponsor may submit a request to the Administrator of the Division to protect from disclosure any information in the application which, under generally accepted business practices, would be considered a trade secret or other confidential proprietary information of the business. After consulting with the business, the Administrator of the Division shall determine whether to protect the information from disclosure. The decision of the Administrator of the Division is final and is not subject to judicial review. If the Administrator of the Division determines to protect the information from disclosure, the protected information:*

- (a) Is confidential proprietary information of the business;*
- (b) Is not a public record;*
- (c) Must be redacted by the Administrator of the Division from any copy of the application that is disclosed to the public; and*
- (d) Must not be disclosed to any person who is not an officer or employee of the Division unless the lead participant consents to the disclosure.*

8. *The Division may adopt any regulations necessary to carry out the provisions of sections 2 to 12, inclusive, of this act.*

9. *The Nevada Tax Commission and the Nevada Gaming Commission:*

(a) Shall adopt regulations prescribing the manner in which transferable tax credits described in this section will be administered.

(b) May adopt any other regulations that are necessary to carry out the provisions of sections 2 to 12, inclusive, of this act.

10. *As used in this section:*

(a) "Certification of costs" means a report from an independent certified public accountant attesting:

(1) To the amount of the actual costs of construction of the project; and

(2) That those costs may be included in the eligible basis of the project pursuant to the provisions of 26 U.S.C. § 42.

(b) "Transferable tax credit threshold points" means points awarded based on specific objectives determined by the Division through the dissemination of a strategic plan for the development of affordable housing created by the Division, the review of housing data and the receipt of input from persons interested in the development of affordable housing.

Sec. 10. 1. *Except as otherwise provided in this subsection, the Division shall not approve any application for transferable tax credits submitted pursuant to section 9 of this act if:*



(a) Approval of the application would cause the total amount of transferable tax credits approved pursuant to section 9 of this act for each fiscal year to exceed \$10,000,000. Any portion of the \$10,000,000 per fiscal year for which transferable tax credits have not previously been approved may be carried forward and made available for approval during the next or any future fiscal year ending on or before June 30, 2023. If the Division determines that approval of an application that would cause the total amount of transferable tax credits approved pursuant to section 9 of this act in a fiscal year to exceed \$10,000,000 is necessary to ensure the maximum development of affordable housing in this State through the approval of transferable tax credits pursuant to section 9 of this act, the Division may approve the application unless the approval of the application would cause the total amount of transferable tax credits approved pursuant to section 9 of this act in the fiscal year to exceed \$13,000,000. If the Division approves an application for transferable tax credits that causes the total amount of transferable tax credits approved pursuant to section 9 of this act in a fiscal year to exceed \$10,000,000, the Division must reduce the amount of transferable tax credits which may be approved pursuant to section 9 of this act in the next fiscal year by the amount of transferable tax credits approved in excess of \$10,000,000 in the previous fiscal year.

(b) The Division receives the application on or after July 1, 2023.

2. The transferable tax credits issued to a project sponsor pursuant to section 9 of this act expire 4 years after the date on which the transferable tax credits are issued to the project sponsor.

Sec. 11. 1. *A project sponsor that is found to have submitted any false statement or made any false representation in any document submitted for the purpose of obtaining transferable tax credits pursuant to sections 2 to 12, inclusive, of this act or that fails to comply with the requirements of the qualified allocation plan or the declaration of restrictive covenants and conditions shall repay to the Department or the Nevada Gaming Control Board, as applicable, any portion of the transferable tax credits to which the project sponsor is not entitled.*

2. Transferable tax credits purchased in good faith are not subject to forfeiture or repayment by the transferee unless the transferee submitted fraudulent information in connection with the purchase.



Sec. 12. *The Division shall, on or before October 1 of each year, prepare and submit to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature an annual report which includes, for the immediately preceding fiscal year:*

- 1. The number of applications submitted for a certificate of eligibility for transferable tax credits pursuant to section 9 of this act;*
- 2. The number of projects for which transferable tax credits were approved;*
- 3. Each type of project for which transferable tax credits were approved;*
- 4. The amount of transferable tax credits approved;*
- 5. The amount of transferable tax credits used;*
- 6. The amount of transferable tax credits transferred;*
- 7. The amount of transferable tax credits taken against each allowable fee or tax, including the actual amount used and outstanding, in total and for each project; and*
- 8. The number of units of affordable housing created because of the issuance of transferable tax credits pursuant to section 9 of this act. As used in this subsection, "unit of affordable housing" means a residential unit in a project that is a rent-restricted unit, as defined in 26 U.S.C. § 42(g)(2).*

Sec. 13. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. 14. This act becomes effective:

1. On July 1, 2019, for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act and on January 1, 2020, for all other purposes.

2. Expires by limitation on January 1, 2030.

