~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 27, 2019

**H. 4133**

Introduced by Reps. Weeks, G.M. Smith, Clyburn, Stavrinakis, Gilliard, Bales, Hosey, Henderson‑Myers, R. Williams, Rutherford, Alexander and Forrest

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Read the first time February 27, 2019.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 4133) to amend Section 12‑6‑3530, Code of Laws of South Carolina, 1976, relating to community development tax credits, so as to allow a tax credit of, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

G. MURRELL SMITH, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on February 27, 2019**

**State Expenditure**

The Department of Commerce indicates that any additional workload related to the department’s certification, authorization, and monitoring process for administering tax credits is not expected to require additional staffing or incur additional costs, and would have no expenditure impact on the general fund, federal funds, or other funds.

**State Revenue**

**Section 1.** A community development corporation is a nonprofit corporation which is tax exempt and has a primary mission of developing and improving low-income communities and neighborhoods through economic and related development. A community development financial institution is an organization that has a primary mission of promoting community development by providing credit, capital, or development services to small businesses or home mortgage assistance to individuals. Currently, pursuant to Section 12-6-3530, a taxpayer is allowed a nonrefundable tax credit against South Carolina income tax, bank tax, or insurance premium tax equal to thirty-three percent of the investment in a community development corporation or community development financial institution. The total credit that may be claimed by all taxpayers is $1,000,000 in one calendar year and $5,000,000 for all calendar years. Any unused credit may be carried forward and must be used before the taxable year that begins on or after ten years from the date of the acquisition of stock or other equity interest that is the basis for the credit.

The table below describes the number of taxpayers and the amount of tax credits claimed against investments in community development corporations and community development financial institutions from tax year 2002 to tax year 2015, the latest year data is available. Over this period, 612 taxpayers have claimed $2,390,122 in nonrefundable tax credits.

**History of CDC / CDFI Tax Credits Claimed**

**Tax Year** **No. of Taxpayers Amount of**

**Filing Credits** **Tax Credits**

2002 12 $2,957

2003 9 $2,050

2004 12 $22,539

2005 14 $5,234

2006 16 $14,001

2007 33 $31,927

2008 41 $113,354

2009 28 $25,877

2010 32 $275,545

2011 36 $378,668

2012 38 $173,263

2013 88 $502,334

2014 112 $287,865

2015 141 $554,508

2016 N/A N/A

Total 612 $2,390,122

Note: N/A - Not Available.

Sources: Board of Economic Advisors; S.C. Department of Revenue

This bill makes several changes to the current statute and may be summarized as follows:

A taxpayer may claim a tax credit equal to thirty-three percent of equity investments and may claim a tax credit equal to fifty percent of cash donations in a certified community development corporation or in a community development financial institution

Total credits for all taxpayers may not exceed the aggregate amount in any calendar year based on the following schedule:

$1,000,000 for all taxpayers in tax year 2019;

$2,000,000 for all taxpayers in tax year 2020;

$3,000,000 for all taxpayers in tax years after 2020.

The Department of Commerce must not authorize any tax credits after the annual aggregate limitation has been met as listed above

The Department of Commerce shall authorize the tax credits each year on a first-come first-served basis

Twenty-five percent of annual tax credits must be held in a reserve account during the first three quarters of each tax year and made available exclusively to small, rural based community development corporations. During the first three quarters of any tax year, an individual community development corporation or a community development financial institution must not be authorized to receive more than fifteen percent of the statewide total annual credits. During the fourth quarter of each tax year, all remaining tax credits are available to all certified community development corporations or community development financial institutions.

As shown in the table above, the $1,000,000 annual limitation has never been achieved in any tax year during the existence of the community development tax credit program. This section would change the allocation method of how the Department of Commerce awards tax credits for investments in community development corporations and community development financial institutions. This section also distinguishes between investments as an equity investment versus a cash donation. This section would change the tax credit percentage from thirty-three percent of all amounts invested to all equity investments in a certified community development corporation or in a community development financial institution. The language also adds a tax credit equal to fifty percent for all cash donations in a certified community development corporation or in a community development financial institution.

Using the latest data from the table above, there were $554,508 in tax credits claimed by investors in community development corporations and community development financial institutions in tax year 2015. The number of taxpayers claiming the tax credit, the total amount of tax credits claimed, and the average tax credit claimed by each taxpayer has steadily risen over the latest six tax years. Since more than one-third of all certified community development corporations and community development financial institutions are located in the Southeast, and market demand continues to be strong by serving areas where traditional financing is underrepresented, it is reasonable to expect that the amount of community development corporation and community development financial institution credits will continue to increase by FY2019-20. Future growth in the usage of the tax credits will depend on the availability of high-risk investment funds, the available housing stock, and the overall strength of the economy. Since the Southern region is one of the fastest growing housing regions in the United States, it would be reasonable to expect the maximum aggregate tax credit limit will be met each calendar year.

Using an average aggregate amount of tax credits claimed per tax year of $500,000 in the absence of the proposed legislation, the difference in the maximum aggregate tax credits claimed in tax year 2019 (FY2019-20) of $1,000,000 under the current proposal and $500,000 under existing law would reduce general fund income, bank, or insurance premium tax revenues by an additional estimated $500,000 in FY2019-20. Using the same analysis, this would reduce general fund income, bank, or insurance premium tax revenues by an additional estimated $1,500,000 in FY2020-21. The bill’s revenue impact for FY2021-22 through FY2023-24 for the extension of the sunset date is discussed below.

**Section 2.** This section would add unnumbered sub-items to Section 12-6-3530 to insure that returns on investments in a certified community development corporation and a certified community development financial institution, including the value of any tax credits authorized pursuant to this section, may not exceed the total amount of the initial investment. This amount would be part of the aggregate annual limitation for all taxpayers in a calendar year.

**Section 3.** This section would extend the sunset date of this tax credit by an additional three years to June 30, 2023, unless the provisions are reauthorized by the General Assembly before June 30, 2020. After this date, all laws and regulations dealing with community development corporations and community development financial institutions would be repealed.

Since the community development corporation and community development financial institutions tax credit is scheduled to be repealed on June 30, 2020, the Board of Economic Advisors (BEA) is not expecting any further additional revenue reductions in the state general fund revenue beginning in FY2020-21 from this tax credit. If the scheduled repeal date of the community development corporation and community development financial institutions tax credit is extended, by three years, from June 30, 2020, to June 30, 2023, state general fund revenue will be affected. In this case, state general fund individual and corporate income taxes, bank taxes, and insurance premium taxes (including retaliatory taxes), or any combination thereof will be reduced by an estimated $3,000,000 in FY2021-22 through FY2023-24.

**Section 4.** This act takes effect January 1, 2019.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 12‑6‑3530, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COMMUNITY DEVELOPMENT TAX CREDITS, SO AS TO ALLOW A TAX CREDIT OF FIFTY PERCENT OF ANY CASH DONATION TO A COMMUNITY DEVELOPMENT CORPORATION OR COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS, TO DELETE AN AGGREGATE CREDIT PROVISION AND SET AN ANNUAL LIMIT, TO ESTABLISH TAX CREDIT RESERVE ACCOUNTS FOR THE FIRST THREE QUARTERS OF EACH TAX YEAR SO AS TO AVOID THE DEPLETION OF CREDITS BY AN INDIVIDUAL TAXPAYER, TO DELETE THE PRO‑RATA DISTRIBUTION OF TAX CREDITS, TO ALLOW FINANCIAL INSTITUTIONS WITH TAX LIABILITIES IN THIS STATE TO INVEST IN COMMUNITY DEVELOPMENT CORPORATIONS FOR THE PURPOSE OF RECEIVING A TAX CREDIT, AND TO PROVIDE THAT RETURNS ON INVESTMENTS IN CERTIFIED COMMUNITY DEVELOPMENT CORPORATIONS AND CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS MAY NOT EXCEED THE TOTAL AMOUNT OF THE INITIAL INVESTMENT; AND TO AMEND SECTION 4 OF ACT 314 OF 2000, AS AMENDED, RELATING TO COMMUNITY DEVELOPMENT CORPORATIONS AND FINANCIAL INSTITUTIONS, SO AS TO EXTEND THE PROVISIONS OF THE SOUTH CAROLINA COMMUNITY ECONOMIC DEVELOPMENT ACT UNTIL JUNE 30, 2023.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12‑6‑3530(A), (B), (C), (D), (E), (F), and (L) of the 1976 Code is amended to read:

“(A) A taxpayer may claim as a credit against his state income tax, bank tax, or premium tax liability thirty‑three percent of all ~~amounts invested~~ equity investments in a certified community development corporation or in a community development financial institution, as defined in Section 34‑43‑20(2) or (3). A taxpayer that makes a cash donation to a certified community development corporation or community development financial institution may claim a credit equal to fifty percent of the donation.

To qualify for this credit the taxpayer must obtain a certificate from the South Carolina Department of Commerce certifying that the entity into which the funds are invested is a community development corporation or a community development financial institution within the meaning of Section 34‑43‑20(2) or (3) and certifying that the credit taken or available to that taxpayer will not exceed the annual aggregate ~~five million~~ dollar limitation ~~of all those credits as~~ provided in subsection (B) ~~when added to the credits previously taken or available to other taxpayers making similar investments~~. A taxpayer who invested in good faith in a certified corporation or institution may claim the credit provided in this section, notwithstanding the fact that the certification is later revoked or not renewed by the department.

(B) The total amount of credits allowed pursuant to this section may not exceed in the aggregate ~~five million dollars for all taxpayers and all calendar years and one million dollars for all taxpayers in one calendar year.~~:

(1) one million dollars for all taxpayers in tax year 2019;

(2) two million dollars for all taxpayers in tax year 2020; and

(3) three million dollars for all taxpayers in all tax years after 2020.

(C) The Department of Commerce shall authorize the tax credits each year on a first‑come, first‑served basis. A single community development corporation or community development financial institution may not receive more than twenty‑five percent of the total annual tax credits authorized pursuant to this section ~~in any one calendar year~~. Twenty‑five percent of annual tax credits must be held in a reserve account during the first three quarters of each tax year and made available exclusively to small, rural‑based, community development corporations. During the first three quarters of any tax year, an individual community development corporation or a community development financial institution must not be authorized to receive more than fifteen percent of the statewide total annual credits. During the fourth quarter of each tax year, all remaining tax credits are available to all certified community development corporations or community development financial institutions.

(D) The department shall monitor the investments made by taxpayers in community development corporations and community development financial institutions as permitted by this section and shall perform the functions as provided in ~~subsection~~ subsections (A) and (C) ~~above~~.

(E) If the amount of the credit determined, pursuant to subsection (A), exceeds the taxpayer’s state tax liability for the applicable taxable year, the taxpayer may carry over the excess to the immediately succeeding taxable years. However, the credit carry‑over may not be used for a taxable year that begins on or after ~~ten~~ three years from the date of the acquisition of stock or other equity interest that is the basis for a credit pursuant to this section. The amount of the credit carry‑over from a taxable year must be reduced to the extent that the carry‑over is used by the taxpayer to obtain a credit provided for in this section for a later taxable year.

(F) ~~Notwithstanding the provisions of subsections (A), (B), (C), (D), and (E) above, if on April 1, 2001, or as soon after that as the department is able to determine, the total amount of tax credits which may be claimed by all taxpayers exceeds the total amount of tax credits authorized by this section, the credits must be determined on a pro rata basis. For purposes of this subsection, a community development corporation or community development financial institution for which an investment may be claimed as a tax credit pursuant to this section must report all investments made before April 1, 2001, to the department by April 1, 2001, which shall inform, as soon as reasonably possible, all community development corporations and community development financial institutions of the total of all investments in all institutions and corporations as of April 1, 2001~~ The department must not authorize any tax credits after the annual aggregate limitation set forth in subsection (B) has been reached.

(L) Banks and financial institutions ~~chartered by the~~ with tax liabilities in this State ~~of South Carolina~~ may invest in community development corporations and community development financial institutions incorporated pursuant to the laws of this State, up to a maximum of ten percent of a chartered bank or financial institution’s total capital and surplus.”

SECTION 2. Section 12‑6‑3530 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) Returns on investments in certified community development corporations and certified community development financial institutions, including the value of any tax credits authorized pursuant to this section, may not exceed the total amount of initial investment in certified community development corporations and community development financial institutions.”

SECTION 3. Section 4 of Act 314 of 2000, as last amended by Act 46 of 2015, is further amended to read:

“SECTION 4. Unless reauthorized by the General Assembly, the provisions of this act shall terminate on June 30, ~~2020~~ 2023, and this act and all other laws and regulations governing, authorizing, and otherwise dealing with community development corporations and community development financial institutions are deemed repealed on that date.”

SECTION 4. This act takes effect January 1, 2019.

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