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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research and Drafting

Legislative Budget Office

H.B. 3
(l_135_0648-2)
135th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 3's Bill Analysis

Version: In House Economic and Workforce Development

Primary Sponsors: Reps. Pavliga and McNally

Local Impact Statement Procedure Required: No

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Highlights

Fund	FY 2024	FY 2025	Future Years
State General Revenue Fund			
Revenues	Loss of $21.6 million	Loss of $44.4 million	Annual losses through FY 2038, ranging up to $141 million or more
Expenditures	$0	$0	$0
Local Government and Public Library funds (counties, municipalities, townships, and public libraries)			
Revenues	Loss of $0.8 million	Loss of $1.5 million	Annual losses through FY 2038, ranging up to $4.8 million or more
Expenditures	$0	$0	$0

Note: The fiscal year for the state, school districts, and certain other local governments runs from July 1 through June 30 and is designated by the calendar year in which it ends. For other local governments, the fiscal year is identical to the calendar year.

- The bill creates a nonrefundable credit for certain housing projects placed into service between January 1, 2023 and January 1, 2029. The new credit could reduce state tax receipts by $22.3 million in FY 2024, growing to roughly $146 million in FY 2029. Revenue losses would plateau at that level for five years, before decreasing gradually to zero by FY 2039. Future changes in federal tax policy could substantially affect this estimated revenue loss. The fiscal note assumes no substantial changes to the federal program.

- The revenue loss would be shared by the GRF (96.68%), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.66%) under codified law. Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.

Detailed Analysis

The bill creates a nonrefundable credit against the financial institutions tax (FIT), the personal income tax (PIT), and both the foreign and domestic insurance taxes for certain housing projects placed into service between January 1, 2023 and January 1, 2029. Eligibility is limited to those housing projects that also receive the federal low-income housing tax credit (LIHTC), which covers a portion of the costs of constructing new housing units or substantially rehabilitating existing units. Under the bill, the credit value for an individual project will be determined by the Director of the Ohio Housing Finance Agency (OHFA). However, the value of the state credit cannot exceed the value of the federal LIHTC. The bill gives OHFA discretion to award the credit based on what it perceives as necessary "to ensure the financial feasibility" of a housing project. The bill generally limits state tax credits "reserved" for a given fiscal year to $500 million. The limitation applies to the aggregate amount of credits that the taxpayers can claim over ten years. The Director is prohibited from reserving credits after January 1, 2029.

The federal credit is transferrable, and the analogous state credit proposed in the bill is functionally equivalent to a transferrable credit because it allows an equity owner in the project to claim "all or a portion of the annual credit amount stated on the eligibility certificate." Since the credit is not based on a proportion of the equity invested, it will likely be utilized in its entirety at the earliest possible date. The bill has several provisions governing credit allocation and reporting requirements. Please refer to the LSC bill analysis for a full description of these policies.

The bill repeals a provision that explicitly authorized a county auditor to value LIHTC property for tax purposes by using the income, cost, or comparable sales methods. It requires the Tax Commissioner to adopt a uniform tax valuation formula for federally subsidized residential rental property that takes into account a property's operating income and expenses and a uniform capitalization rate. The bill sets a minimum total value for subsidized residential rental property of 150% of the value of the underlying land. It requires the owner of a subsidized residential rental property to annually report the property's operating income and expenses to the county auditor of the county in which the property is located.

Fiscal effect

The bill imposes an annual limit of $500 million on the lifetime (i.e., ten-year) value of tax credits that may be reserved in a fiscal year, though it allows the addition of amounts below that threshold that were not issued in previous years. The four taxes listed above are GRF taxes, raising the possibility of GRF revenue losses of up to nearly $300 million annually for several years, once the Director has awarded credits for the sixth and final year of new projects in FY 2029. But the revenue losses could be significantly less than this if either (1) the demand on the part of private developers for tax credits is significantly less than $500 million per year, or (2) the federal government imposes limits on the issuance of LIHTCs with which a state credit could be paired for a given project. Some background information on federal LIHTCs is therefore important in helping to determine the revenue effect of the bill.

According to the Congressional Research Service, LIHTCs are awarded to developers to offset the cost of constructing rental housing in exchange for agreeing to reserve a fraction of rent-restricted units for lower income households. Once a developer receives an allocation it generally has two years to complete its project. Credits may not be claimed until a property is "placed in service," which means it is completed and available to be rented. Developers may claim the tax credits in equal amounts over ten years. Due to the need for upfront financing to complete construction, developers typically sell the ten-year stream of tax credits to outside investors (e.g., corporations, financial institutions) in exchange for equity financing.[1]

There are two types of LIHTCs available to developers, which OHFA refers to as the "competitive (9%) housing tax credit program" and the "non-competitive (4%) housing tax credit program." The 9% credit is generally reserved for new construction and is intended to deliver up to a 70% subsidy (albeit a subsidy target that is often exceeded). OHFA remarks that it typically funds only 25% to 30% of all applications submitted, due to the demand for these 9% credits.[2] Separately, the 4% credit is typically used for rehabilitation projects utilizing at least 50% in federally tax-exempt bond financing and is designed to deliver up to a 30% subsidy. The Internal Revenue Code (IRC) requires that developments awarded 4% Housing Tax Credits must utilize multifamily bonds financing for more than 50% of the total project cost.

During FY 2021, OHFA issued IRS Form 8609[3] on behalf of 57 different housing projects totaling $40.3 million.[4] About three-fourths of this dollar amount was claimed using the competitive 9% credit while the remaining one-fourth was attributable to the 4% noncompetitive credit. The recipients will claim this same credit value over ten years, provided they continue to fulfill the eligibility requirements. Under current federal law, the value of 9% credits issued is limited to growing at a rate matching the rate of inflation plus the rate of Ohio's population growth. The value of 4% credits issued is not limited directly, but it is limited indirectly by requirements relating it to issuance of private activity bonds (PABs, see below), which are subject to a cap. Employing forecasts of these variables by IHS Economics and the Census Bureau, the total federal credits are forecast to grow to about $46 million in calendar year 2028.

The larger federal credit leaves 30% of the project cost unsubsidized. The smaller federal credit subsidizes 30% of the project's costs, but it exists in tandem with funding from a separately awarded tax-exempt PAB, which leaves only 20% of the project unsubsidized. In practical terms, the federal government annually allocates nearly $1.2 billion in PAB issuance authority to the state of Ohio, but it is not used in its entirety.[5] The bond issuance ceiling has not been a limiting

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[1] Refer to An Introduction to the Low-Income Housing Tax Credit (PDF), which can also be found by searching "RS22389" on crsreports.congress.gov/.

[2] Refer to Housing Tax Credit Program summary information found on ohiohome.org.

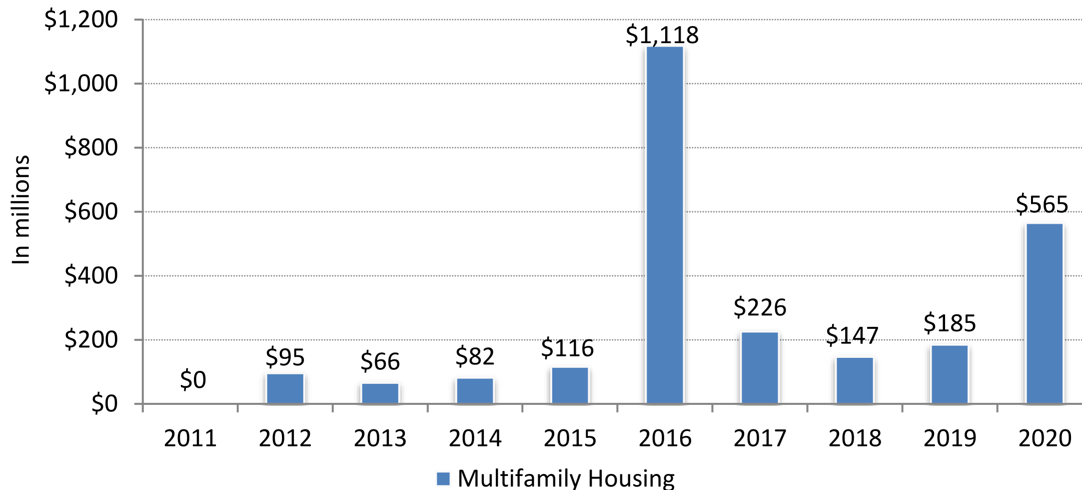
[3] For an owner to claim a low-income housing credit on a building, the housing credit agency must make an allocation of the credit by issuing Form 8609. Form 8609 is also used to certify certain information.

[4] Most of the recipients of the federal LIHTCs were banks, equity funds, or community development corporations.

[5] Multifamily housing is but one category of allowable uses for PABs. The Ohio Department of Development sub-allocates the state's federally mandated "volume cap" on the maximum allowable PAB

factor over the past decade. Instead, the number of applications was the biggest determinant in noncompetitive credit awards. As seen in Chart 1, the value of tax-exempt bond issuances for multifamily housing has fluctuated over the past decade. By proxy, the value of federal noncompetitive LIHTCs newly issued in a given year has similarly fluctuated.

Chart 1: Ohio's Sub-Allocation of Tax Exempt, Private Activity Bonds to Multifamily Housing, 2011-2020



Source: cdfa.net/rc/volumecap.html

Because the limitations imposed at the federal level differ between the two types of LIHTCs, this analysis estimates separate revenue losses attributable to the state credits that are used together with the 9% and the 4% LIHTCs. The total revenue loss from the bill is then the sum of the revenue losses from each. The analysis assumes the state credit will subsidize 30% of the projects receiving the competitive federal credit, and it will subsidize 20% of projects receiving the noncompetitive federal credit. Under these assumptions, the state credit would collectively be awarded between $10 million and $12 million per year to new competitive projects and another $12 million to $14 million per year to new noncompetitive projects. In total, new issuances under the bill would be between $22 million and $26 million per year over the six-year eligibility period. Each credit could be claimed for ten years after issuance, so state revenue losses would grow over the first six years, before plateauing, and then decline as the credit expires at its scheduled conclusion.

Though the bill allows for projects placed into service between January 1, 2023 and January 1, 2029, to be awarded up to $3.0 billion in tax credits (equal to $500 million of new issuances in six fiscal years included in this period, FY 2024 through FY 2029), the federal policy parameters imply that OHFA could issue credits totaling $1.46 billion over a 15-year period. The following chart illustrates how these credits would be claimed by taxpayers over their ten-year period. State revenue losses would range from $22.3 million to $145.6 million, annually, from FY 2024 to FY 2038. Absent a legislative change by the federal government, it seems unlikely the

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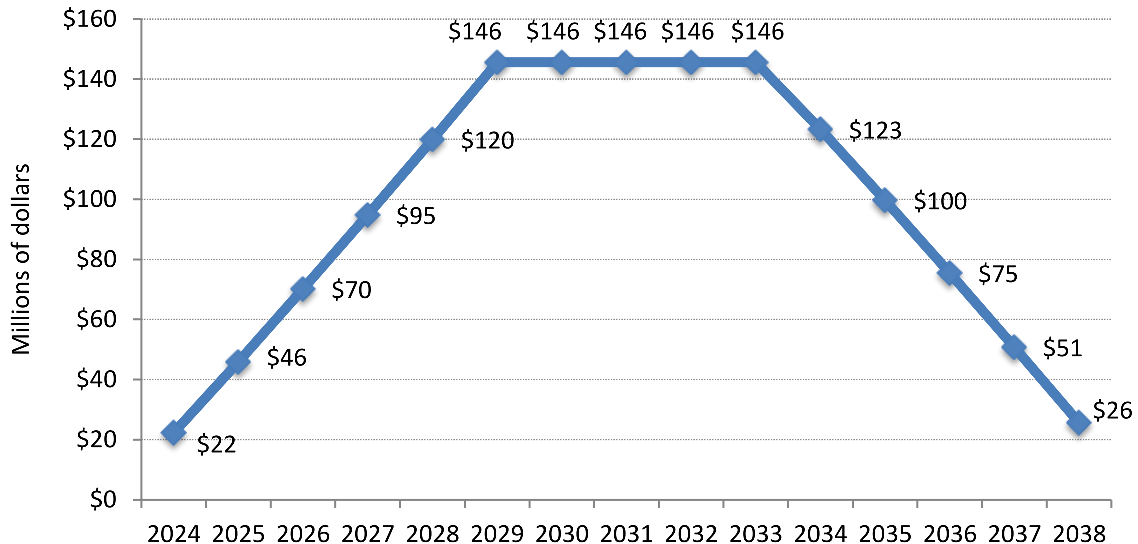
issuances to a variety of categories, including small issue bonds, single-family mortgage revenue bonds, and exempt facilities bonds.

$500 million state limitation will be met in any given year. Estimates provided below assume no substantial legislative changes to the federal program. Nevertheless, if the bill induces a behavioral effect that substantially increases the number of rehabilitation projects (and the corresponding utilization of the 4% credit), the tax revenue losses could exceed the amounts illustrated in Chart 2. The state revenue losses would be shared by the GRF (96.68%), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.66%) under codified law. Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.

Chart 2: Estimated State Revenue Loss (in millions), FY 2024-FY 2038



Synopsis of Fiscal Effect Changes

The substitute bill has fiscal effects described above whereas the introduced version of the bill has no direct fiscal effect on the state or political subdivisions.

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