

SENATE BILL NO. 284—SENATOR RATTI

MARCH 22, 2021

Referred to Committee on Revenue and
Economic Development

SUMMARY—Revises provisions relating to transferable tax credits
for affordable housing. (BDR 32-651)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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

AN ACT relating to taxation; revising the procedure for applying
for and issuing transferable tax credits for affordable
housing; requiring the recapture of transferable tax credits
under certain circumstances; revising provisions limiting
the amount of transferable tax credits for affordable
housing that may be issued; eliminating the prospective
expiration of the program of transferable tax credits for
affordable housing; and providing other matters properly
relating thereto.

Legislative Counsel's Digest:

Existing law 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. (NRS 360.860-360.870; 26
U.S.C. § 42(g))

Existing law requires a project sponsor who is applying for such transferable
tax credits to submit to the Division, upon the completion of the project, a final
application, a certification of costs and such other information as the Division may
deem necessary to determine whether the project qualifies for the issuance of
transferable tax credits. (NRS 360.867) **Section 1** of this bill revises the procedure
for the issuance of transferable tax credits so that transferable tax credits are issued
before, rather than after, the project is completed. Specifically, **section 1** requires
the final application for transferable tax credits to be submitted not less than 45
days before the project is closed rather than upon completion of the project. **Section**
1 further requires that, upon completion of the project: (1) the project sponsor must
submit to the Division a certification of costs of the project and such other
information as the Division deems necessary to determine the final cost of the



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project; (2) the Division must determine, based on the final cost of the project as indicated in the certification of costs, whether the amount of transferable tax credits issued to the project sponsor is greater than the amount of transferable tax credits to which the project sponsor is entitled; (3) the Division must notify the project sponsor, the Department of Taxation, the Office of Finance, the Fiscal Analysis Division of the Legislative Counsel Bureau and the Nevada Gaming Control Board if the Division determines that the project sponsor is not entitled to any portion of the transferable tax credits issued to the project sponsor; and (4) the project sponsor is required to repay to the Department of Taxation or the Nevada Gaming Control Board, as applicable, the amount of transferable tax credits to which the project sponsor is not entitled. Finally, **section 1** authorizes an entity to which a project sponsor transfers transferable tax credits to transfer those tax credits to an affiliate or subsidiary and requires the entity to notify the Division of such a transfer.

Existing law prohibits the Division from approving an application for transferable tax credits that is submitted after July 1, 2023, and provides for the expiration of the program of transferable tax credits for affordable housing on January 1, 2030. (NRS 360.868; section 14 of chapter 594, Statutes of Nevada 2019, at page 3766) **Section 2** of this bill removes the prohibition against approving an application received after July 1, 2023. **Section 2** prohibits the Division from approving an application for transferable tax credits if doing so would cause the total amount of transferable tax credits approved over the lifetime of the program of transferable tax credits for affordable housing to exceed \$40,000,000. **Section 3** of this bill removes the expiration date for the program of transferable tax credits for affordable housing.

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

Section 1. NRS 360.867 is hereby amended to read as follows:

360.867 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



1 eligibility for a reservation of transferable tax credits are met and the
2 amount of transferable tax credit threshold points awarded to the
3 project;

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

9 (c) Reserve the amount of transferable tax credits for which each
10 project is determined to be eligible pursuant to paragraph (b) in the
11 order of the amount of transferable tax credit threshold points
12 awarded to each such project pursuant to paragraph (a) until a
13 reservation is made for each project or the amount of transferable
14 credits reserved for the fiscal year is equal to the amount of
15 transferable tax credits which the Division is authorized to approve
16 for the fiscal year pursuant to NRS 360.868, whichever occurs first.
17 If the amount of transferable tax credits reserved for the fiscal year
18 reaches the amount of transferable tax credits which the Division is
19 authorized to approve for the fiscal year pursuant to NRS 360.868
20 before each eligible project is reserved the full amount of
21 transferable tax credits for which it is determined to be eligible
22 pursuant to paragraph (b), the Division may take any action that the
23 Division determines will ensure the maximum development of
24 affordable housing in this State, including, without limitation,
25 proportionally reducing the reservation of each project for which
26 transferable tax credits are reserved or reserving for the last project
27 to receive a reservation of transferable tax credits an amount of
28 transferable tax credits that is less than the full amount of
29 transferable tax credits for which the project was determined to be
30 eligible pursuant to paragraph (b).

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

35 (a) The project sponsor;

36 (b) The Department;

37 (c) The Nevada Gaming Control Board;

38 (d) The Office of Finance; and

39 (e) The Fiscal Analysis Division of the Legislative Counsel
40 Bureau.

41 5. The Division:

42 (a) Shall terminate a reservation of transferable tax credits if the
43 project for which the reservation is awarded is not closed within
44 the period specified in paragraph (a) of subsection 6 unless, before
45 the expiration of that period, the Division receives from the project



1 sponsor a written request for an extension of not more than 45 days.
2 The Division may grant only one extension pursuant to this
3 paragraph and, if the project is not closed before the expiration of
4 the extension period, the Division must terminate the reservation of
5 transferable tax credits. A request for an extension submitted
6 pursuant to this paragraph must be accompanied by proof
7 satisfactory to the Division that:

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

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

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

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

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

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

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

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

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

39 (4) Executed a written commitment for a loan for permanent
40 financing for the construction of the project in an amount that
41 ensures the financial feasibility of the project. The commitment may
42 be subject to the condition that the construction is completed and the
43 project is appraised for an amount sufficient to justify the loan in
44 accordance with the requirements of the lender for credit. If the
45 project is a rural development project that receives loans or grants



1 from the United States Department of Agriculture, the applicant
2 must provide a form approved by the Division that indicates that
3 money has been obligated for the construction of the project before
4 the expiration of the period. An advance of that money is not
5 required before the expiration of the period.

6 (b) ~~Upon completion of the project,~~ **Not less than 45 days**
7 **before the project is closed,** the project sponsor must submit to the
8 Division a final application for transferable tax credits on a form
9 provided by the Division ~~[, a certification of costs on a form~~
10 ~~provided by the Division]~~ and such other information as the
11 Division deems necessary to determine whether the project qualifies
12 for the issuance of transferable tax credits. Upon receipt of a final
13 application pursuant to this paragraph, the Division shall complete a
14 review of the project ~~[,]~~ **and** the project sponsor ~~. [and the~~
15 ~~certification of costs.]~~ If, after such review, the Division determines
16 that the project complies with the requirements upon which
17 transferable tax credits were reserved pursuant to this section and a
18 declaration of restrictive covenants and conditions ~~[has been]~~ **will be**
19 recorded in the office of the county recorder for the county in which
20 the project is located:

21 (1) The Division shall:

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

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

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

36 (3) Upon receipt of the declaration described in subparagraph
37 (2), issue transferable tax credits to the project sponsor in the
38 amount approved by the Division. The project sponsor shall notify
39 the Division upon transferring any transferable tax credits. **An entity**
40 **to which a project sponsor transfers any transferable tax credits**
41 **may transfer those transferable tax credits to one of its**
42 **subsidiaries or affiliates and shall notify the Division upon**
43 **making any such transfer.** The Division shall notify the
44 Department of Taxation, the Office of Finance, the Fiscal Analysis
45 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. *Upon completion of the project, the project sponsor shall submit to the Division a certification of costs on a form provided by the Division and such other information as the Division deems necessary to determine the final cost of the project. If, based upon the final cost of the project indicated in the certification of costs, the Division determines that the amount of transferable tax credits issued by the Division to the project sponsor is greater than the amount of transferable tax credits to which the project sponsor is entitled:*

(a) *The Division shall notify the project sponsor, the Department of Taxation, the Office of Finance, the Fiscal Analysis Division of the Legislative Counsel Bureau and the Nevada Gaming Control Board that the project sponsor is required to repay the portion of the transferable tax credits to which the project sponsor is not entitled. The notice must specify the amount of transferable tax credits that the project sponsor is required to repay.*

(b) *The project sponsor shall repay to the Department of Taxation or the Nevada Gaming Control Board, as applicable, the portion of the transferable tax credits to which the project sponsor is not entitled.*

8. 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.

~~18.1~~ 9. The Division may adopt any regulations necessary to carry out the provisions of NRS 360.860 to 360.870, inclusive.



~~19.1~~ 10. 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 NRS 360.860 to 360.870, inclusive.

~~110.1~~ 11. As used in this section:

(a) *"Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person.*

(b) "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.

~~110.1~~ (c) *"Subsidiary" means an entity in which a person owns beneficially or of record 50 percent or more of the outstanding equity interests.*

(d) "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. 2. NRS 360.868 is hereby amended to read as follows:

360.868 1. Except as otherwise provided in this subsection, the Division shall not approve any application for transferable tax credits submitted pursuant to NRS 360.867 if:

(a) Approval of the application would cause the total amount of transferable tax credits approved pursuant to NRS 360.867 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 NRS 360.867 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 NRS 360.867, the Division may approve the application unless the approval of the application would cause the total amount of transferable tax credits approved pursuant to NRS 360.867 in the fiscal year to exceed \$13,000,000. If the Division



1 approves an application for transferable tax credits that causes the
2 total amount of transferable tax credits approved pursuant to NRS
3 360.867 in a fiscal year to exceed \$10,000,000, the Division must
4 reduce the amount of transferable tax credits which may be
5 approved pursuant to NRS 360.867 in the next fiscal year by the
6 amount of transferable tax credits approved in excess of
7 \$10,000,000 in the previous fiscal year.

8 (b) ~~{The Division receives the application on or after July 1,~~
9 ~~2023.}~~ *Approval of the application would cause the total amount*
10 *of transferable tax credits approved for all fiscal years pursuant to*
11 *NRS 360.867 to exceed \$40,000,000.*

12 2. The transferable tax credits issued to a project sponsor
13 pursuant to NRS 360.867 expire 4 years after the date on which the
14 transferable tax credits are issued to the project sponsor.

15 **Sec. 3.** Section 14 of chapter 594, Statutes of Nevada 2019, at
16 page 3766, is hereby amended to read as follows:

17 Sec. 14. This act ~~is~~:

18 ~~—1. Becomes}~~ *becomes* effective on July 1, 2019, for the
19 purpose of adopting regulations and performing any other
20 administrative tasks that are necessary to carry out the
21 provisions of this act and on January 1, 2020, for all other
22 purposes.

23 ~~{2. Expires by limitation on January 1, 2030.}~~

24 **Sec. 4.** This act becomes effective on July 1, 2021.

