



**SOUTH CAROLINA STATE HOUSING FINANCE AND DEVELOPMENT AUTHORITY**

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**M E M O R A N D U M**

**Date:** February 21, 2018

**To:** LIHTC Developers

**From:** Laura Nicholson, Development Director

**Subject:** Tax Credit Legislation

On Wednesday, February 7, 2018, [House Bill 4872](#) was introduced by Representative Chip Huggins and [Senate Bill 969](#) was introduced by Senator Ronnie Cromer. The House bill was referred to the [Committee on Ways and Means](#) and the Senate bill was referred to the [Committee on Labor, Commerce and Industry](#). The bills are identical companion bills and propose to modify SC Housing's low-income housing tax credit allocation process by creating a committee to vote on each application consisting of the members of SC Housing's Board of Commissioners and nine members appointed by the local governing body (city or county council) relevant to each application.

SC Housing became aware of the bills on the afternoon of February 7, 2018 upon review of the House and Senate Journals for the day. We are tracking the bills and monitoring their progress as well as monitoring each committee for meetings concerning the bills. There has been no activity since introduction and referral.

SC Housing considers this legislation to be an attempt to thwart LIHTC developments. First, this would significantly alter the process of allocating credits as they would no longer be awarded to the highest point scores until credits are exhausted and, instead, opens the process up to external influencers. Secondly, as many of you are aware, Department of Health and Environmental Control (DHEC) does not take an active role on the Board; therefore, the proposed committee would result in 8 Commissioners and 9 local members. As the legislation proposes each member of the committee have one vote each, this

legislation will have the chilling effect of giving local veto power over developments.

[Revenue Ruling 2016-29](#) provides direct guidance on this matter by unequivocally stating that allocating agencies should not give local veto power and doing so would be inconsistent with Federal fair housing laws. As you may recall, the recent disparate impact case (*Texas Department of Housing and Community Affairs v. Inclusive Communities Project*) held that the Fair Housing Act authorizes lawsuits to challenge housing policies with a disparate impact on minorities regardless of discriminatory intent. If SC Housing were subjected to such litigation, the future of the administration of the low-income housing tax credit in South Carolina would quickly come into question.

We urge you to review the proposed legislation, the referenced Revenue Ruling and the numerous articles concerning the Texas case and disparate impact. If you agree with SC Housing that this legislation will have the chilling effect of giving local veto power over developments and could cause the future of the LIHTC program in South Carolina to be uncertain, please consider contacting your Representative and/or Senator, the members of the above-referenced committees, and/or the sponsors of the bills and urge them to reject the bills.