

# **Policies for Improved Affordable Housing Opportunities in Indiana: *Rent Escrow and an Expanded Tax Credit System***

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*For*  
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# Executive Summary

The extreme lack of affordable housing options for Indiana renters endangers families and disproportionately harms minorities. The constrained environment of Indiana's rental market creates barriers for low-income renters. A recent study done by SAVI found that of the 2000 property owners that filed for evictions in the first six months of 2022, 50 of them accounted for 55% of all of the eviction filings.

The Notre Dame Student Policy Network housing policy team targeted their semester-long research project on two potential solutions for the affordable housing and eviction crisis in Indiana: a rent escrow and repair and deduction policy and an expanded tax credit system. As 1 of 5 states without rent escrow and 1 of 11 without a clear repair and deduction policy, Indiana misses an opportunity to serve its renting population. This report analyzes the current legislative landscape in Indiana, outlines policies in other states, and presents recommendations for similar legislation in Indiana.

This paper also addresses the benefits of low-income housing tax credits and presents findings on how an expanded policy would benefit renters in Indiana. This section outlines current legislation and policy for tax credits in Indiana, presents findings from other states, and gives recommendations to benefit low-income renters.

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*The Student Policy Network is a student-run initiative at the University of Notre Dame that provides undergraduate students with opportunities to pursue policy research and advocacy projects in real-world settings. This semester, the SPN Housing Policy team partnered with Prosperity Indiana to examine Indiana's current legislative landscape on rent escrow and tax credits. Our team examined policies from other states and the associated impacts of implementing these policies in Indiana.*

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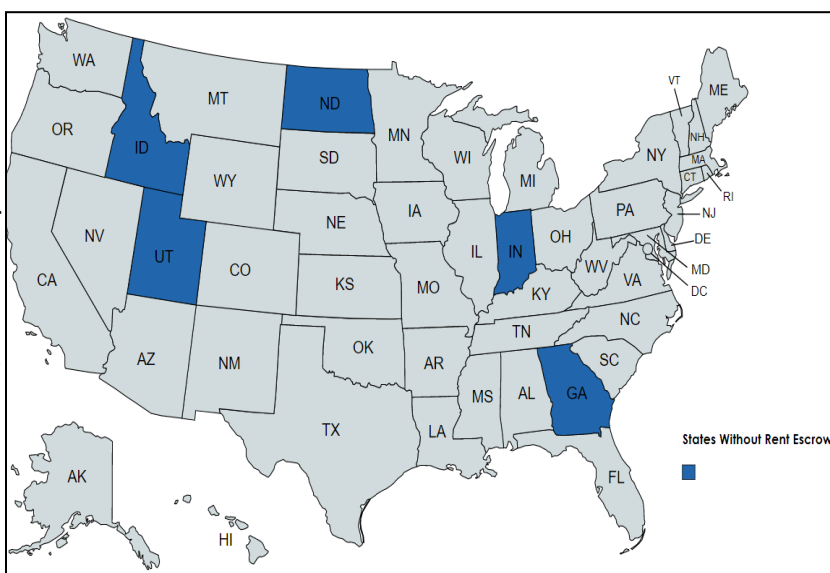
# Rent Escrow

## Legislative Overview

Indiana's renter crisis has reached a boiling point, especially among the working poor. 87% of Indiana households making \$35,000 or less are deemed rent burdened (i.e., having to spend more than 30% of their income on rent). The weight of these higher prices is felt primarily by racial and ethnic minorities: two-thirds of these poor households are either black or Hispanic, despite only making up 35% of the population.<sup>1</sup> Furthermore, Landlords of low-income households are disincentivized to make necessary repairs under current legislation.<sup>2</sup>

Most tenants lack the basic legal protections and rights needed to ensure habitability in their residences. **Indiana is one of only five states without rent escrow protections for tenants.**<sup>3</sup>

Rent escrow allows tenants to withhold rent if the landlord fails to make necessary repairs and pay that sum to the courts until the repairs have been made. Without these necessary protections, Hoosier tenants are vulnerable to landlord abuse and negligence.



The tenant's only way to receive recourse in Indiana is to sue the landlord in court. But even this system greatly tips the scale in the balance of landlords. A 2015 study found that **90% of tenants lack legal defense, while conversely, 90% of landlords retain a legal defense team.**<sup>4</sup> As a result, tenants are left to fend for themselves when seeking reparations, while landlords can rely on top-notch legal teams to defend their cases.

Indiana renters also face the risk of retaliatory landlords when reporting negligence. Under current law, Indiana landlords can kick tenants out of dwellings within three days of reporting an emergency violation, despite the recent adoption of a clause for anti-retaliation in such cases.<sup>5</sup> The statute, adopted in the spring of 2022, provides protection from landlord retaliation for health code violations reported by the tenant; however, in practice, this

<sup>1</sup> Fair Housing Center of Central Indiana, (2022). *The State of Fair Housing Report in Indiana*, [https://www.fhcci.org/wp-content/uploads/2022/09/Rising-Rents-Report\\_FINAL.pdf](https://www.fhcci.org/wp-content/uploads/2022/09/Rising-Rents-Report_FINAL.pdf).

<sup>2</sup> Fusco, D. (1990). *The Low-Income Housing Tax Credit: An Incentive for Owners of Low-Income Housing Units to Delay the Maintenance of Their Units*. *Tax Lawyer*, 43(4), 969-982.

<sup>3</sup> Housing4Hoosiers, (2020). *Renting in Indiana: A Handbook for Tenants and Landlords* [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://housing4hoosiers.org/wp-content/uploads/2020/07/Renting-in-Indiana-2nd-ED-July-2020-online.pdf](https://housing4hoosiers.org/wp-content/uploads/2020/07/Renting-in-Indiana-2nd-ED-July-2020-online.pdf).

<sup>4</sup> Desmond, M. (2015). *Unaffordable America: Poverty, housing, and Eviction*, <https://www.irp.wisc.edu/publications/fastfocus/pdfs/FF22-2015.pdf>.

<sup>5</sup> IC 32-31-8.5-5 (2022), *Retaliatory acts by landlord prohibited; nonprohibited acts by landlord; conditions under which landlord may bring certain actions* <https://iga.in.gov/legislative/laws/2022/ic/titles/032#32-31-8.5>

statute has to way of being enforced. Thus, tenants in Indiana still face a frightening legal course of action when seeking reparations through the court system: any complaints they make could result in their eviction.

This dynamic creates a double-edged sword for tenants living in uninhabitable units. On one hand, they can report the problem to their landlords and risk being evicted from their homes. If evicted, they are significantly more likely to experience homelessness, food insecurity, and decreased academic achievement for their children.<sup>6</sup> On the other hand, they can continue to live in their substandard dwelling, endangering their health and well-being. **Living in substandard conditions for a prolonged period of time is associated with an increased risk of catching respiratory infections, experiencing lead poisoning, or developing mental health problems.**<sup>7</sup> In either scenario, the tenant's health and well-being are put at significant and prolonged risk, as effective channels for reporting and handling landlord negligence in Indiana simply do not exist.

Over the last few years, Indiana legislators attempted to enshrine tenants' rights but made little progress. One example of this was Indiana Senate Bill 230, which was authored by Sen. Fady Qaddoura, Sen. Greg Walker, and Sen. Shelli Yoder for the 2022 legislative session. SB230 would have created the state's first rent escrow law for renters across the state. It also would have forced landlords to make necessary repairs to heating, electricity, water, and gas within twenty-four hours of being notified. Cities would have been able to pursue legal action against landlords for building nuisances that require an emergency response.<sup>8</sup> As Sen. Qaddoura said after first proposing the bill: "My bill is specifically focused on negligent landlords, negligent, corporate out-of-state landlords who tend to come to our state and exploit Hoosier families."<sup>9</sup> Despite the monumental potential of this law, SB230 was tabled by committee, dealing a significant blow to tenants across Indiana.

Some of the substantial progress in Indiana housing policy has harmed tenants. After the Indianapolis City Government passed an ordinance boosting tenant's rights, state lawmakers moved quickly to pass a new law that would restrict municipalities' ability to legislate landlord-tenant relationships.<sup>10</sup> In April of 2021, Indiana passed House Bill 1541 into law. This law limits local and municipal governments from managing landlord-tenant

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<sup>6</sup> Leifheit, K., et al., (2020). *Eviction in Early Childhood and Neighborhood Poverty, Food Security, and Obesity in Later Childhood and Adolescence: Evidence from a Longitudinal Birth Cohort* <https://doi.org/10.1016/j.ssmph.2020.100575>.

<sup>7</sup> Krieger, J., & Higgins, D. L. (2002). *Housing and health: time again for public health action*. *American journal of public health*, 92(5), 758–768. <https://doi.org/10.2105/ajph.92.5.758>.

<sup>8</sup> Indiana General Assembly (2022). *Senate Bill 230: Enforcement of habitability standards study. Urges the legislative council to assign to the interim study committee on government the topic of enforcement of habitability standards*, <https://iga.in.gov/legislative/2022/bills/senate/230/>.

<sup>9</sup> Cheang, K. L., (2020, January, 20). 'Afraid the Whole Building Was Going to Collapse:' Bills Would Fight Negligent Landlords," The Indianapolis Star, <https://www.indystar.com/story/news/politics/2022/01/20/negligent-landlords-indiana-bills-would-empower-cities/6518632001/>.

<sup>10</sup> Lange, K., (2021, April 14). *Lawmakers Pass 'Fix' to Landlord-Tenant Bill. Advocates Say It Doesn't Solve All Problems*, The Indianapolis Star, <https://www.indystar.com/story/news/politics/2021/04/14/indiana-general-assembly-changes-landlord-tenant-bill/7203152002/>.



relationships that are not explicitly stated in Indiana's code.<sup>11</sup> At the time of passage, many local governments were attempting to enhance their tenants' protection in the wake of the federal eviction moratorium expiring, which was enacted during the start of the pandemic. HB1541 crippled local governments' ability to increase tenant protections.

Rent escrow legislation is not a new idea, and its benefits have long been enjoyed by tenants in other states. Professor Mast, a University of Notre Dame Economics professor with specialties in housing and urban development, pointed out that most states enacted rent escrow laws fifty or more years ago. Furthermore, Mast pointed out how it would be hard to study the effects of such laws on housing markets as many early rent escrow laws were legislated around the same time basic building codes were created. There exists a challenge in studying the impacts of rent escrow; however, Mast argues that to analyze rent escrow effectively, the situation should be viewed as a simple trade-off. Rent escrow could lead to marginally higher rent prices, but it would greatly improve the welfare of tenants.<sup>12</sup> Any proposed rent escrow legislation should account for damages to essential systems in a residence (heating, electricity, water, etc.).

## State-to-state Comparisons

This section focuses primarily on a state-to-state comparison between Indiana and other midwestern states on the issues of rent escrow and repair and deduction. **Every state in the midwest, except Indiana, has a statute of repair and deduction or rent escrow.** Only three states in the Midwest – Illinois, Minnesota, and North Dakota – passed laws after the year 2000 in relation to either rent escrow or repair and deduct. **Indiana is 1 of only 4 states that lacks statutes on BOTH rent escrow and repair and deduction.** This section examines the rent escrow or repair and deduction statute of states in which there is enough data to present a compelling conclusion to its effects. This is not meant to be a state-to-state comparison of every state in the region but rather an analysis from selected examples where either issue has been relevant in the last twenty years.

### Rent Escrow

#### *Illinois*

[765 Ill. Comp. Stat. § 735/2, 735/2.2](#)

[765 Ill. Comp. Stat. § 742/5](#)

*Both laws overlap in terms of their functions. A law that establishes rent escrow in Illinois, for example, may contain aspects of repair and deduction and vice versa.*

765 Ill. Comp. Stat. § 735/2, 735/2.2, Rental Property Utility Service Act, establishes rent escrow in the state of Illinois. *Under the statute, a tenant, after 14 days since notifying their landlord of damages to the property, that*

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<sup>11</sup> Indiana General Assembly, (2021). *House Bill 1541: Landlord-Tenant Relations*, <https://iga.in.gov/legislative/2021/bills/house/1541>.

<sup>12</sup> Mast, E., (2022, November 9). *Interview with Evan Mast*.

*were not the result of the tenant's actions, can appear before the court and deposit their rent to a third party appointed by the court until the landlord fixes the damages.* The landlord must notify the court of any progress after 10 days. After the landlord fixes the damages, the court grants access to all funds pertaining to the landlord after they were withheld.

765 Ill. Comp. Stat. § 742/5, Residential Tenants' Right to Repair Act, focuses on the effects of repair and deduction. A tenant must submit in writing the damages that were procured in the property, excluding those which were caused by the tenant or a tenant's guest. If, after 14 days, the landlord refuses to act, the tenant may choose to repair under his own account. The repairs must not exceed \$500 or half of the monthly rent, whichever is lesser. After the repairs are made, the tenant must submit in writing the repairs that were made to the property. The tenant may choose to deduct the cost of repairs from his monthly rent as long as it does not exceed the maximum limit. Any additional disputes must be resolved in court.

From 2005 to 2006 - the year of the statute's passing was 2005 - the Illinois median rent increased by 1.7%, from \$918 to \$934; the Illinois average rent increased by 2.4%, from \$929 to \$952. However, from 2006 to 2007, the Illinois median rent decreased by 1.5%, from \$934 to \$920; the Illinois average rent decreased by .3%, from \$952 to \$948. This trend is consistent with the US median, which experienced an increase from 2005 to 2006, but a decrease from 2006 to 2007. It can be reasonably concluded that there was no economic retaliation from landlords as a result of these laws.

## ***Minnesota***

[Minn. Stat. Ann. §§ 504B.215\(3\)\(d\), 504B.385](#)

*Passed on August 1st, 2008, Minn. Stat. Ann. §§ 504B.215(3)(d), 504B.385 established rent escrow.*

In case of any damage procured on the property not inflicted by the tenant, the tenant must submit an acknowledgment of the damages in writing to the landlord. If, after 14 days, the landlord refuses to act, the tenant can show up to court and present his case to the judge. After the judge acknowledges the need for escrow, the tenant must allocate full payment of the rent to the court administrator until the issue is resolved. A hearing is then set between 10 days and 14 days. At that time, if the issue is resolved, both parties must notify the judge that the issue was resolved. Then, the judge may grant access to all of the funds to the landlord. A landlord may also ask to receive a portion of the money to repair the damages on the property. If the hearing results in the tenant's favor, the landlord must comply; but if the hearing fails for the tenant, the issue is dropped and the landlord receives full funds for the owed rent.

A landlord may also counterclaim these allegations. If that's the case, a hearing must be set between 7 and 14 days. If the landlord loses his claim, he must repair the damages, as previously stated above. If, however, the court finds the landlord's claims to be valid, the issue is dropped, and the landlord receives the remainder of the funds.

The US median rent decreased by \$16, from \$976 to \$960, between 2008 and 2009. The Minnesota median rent decreased by \$6, from \$869 to \$863, and the Minnesota average rent decreased by \$13, from \$895 to \$882.<sup>13</sup> There was no landlord retaliation in the form of increased rent prices as a result of the passage of this statute.

## ***North Dakota***

### [N.D. Cent. Code §§ 47-16-13, 47-16-13.1](#)

*A form of repair and deduct, N.D. Cent. Code §§ 47-16-13, 47-16-13.1 was passed in 2007 and establishes certain principles by which a landlord must obey in relation to a property. There exists no statute establishing rent escrow in the state of North Dakota.*

N.D. Cent. Code §§ 47-16-13, 47-16-13.1 establishes that a landlord must keep the premises in stable conditions. These may include essential services, as well as certain aspects in relation to building codes. If the tenant procures any damages to these in the property, he must notify his landlord. If the landlord fails to take action, the tenant can sue. Additionally, this North Dakota statute allows for repairs to be made by the tenant and deductions to be taken from rent when the landlord and tenant enter into the agreement “in good faith.” From 2007 to 2008, North Dakota experienced a 4.3% increase in the North Dakota median rent, from \$606 to \$632, and an increase of 4.1% in the average rent, from \$612 to \$637.<sup>14</sup> During this time, the US median rent increased by 5.1%. Thus, North Dakota fared well compared to the US median rent.

## ***Missouri***

### *Kohner Properties, Inc. v. Johnson (2018)*<sup>15</sup>

This case was tried in St. Louis, Missouri. Latasha Johnson was represented by the Legal Services of Eastern Missouri. Kohner Properties, Inc. was represented by Reinker, Hamilton & Piper LLC.

Latasha Johnson refused to pay rent to her landlord, Kohner Properties, Inc., due to a water leak in the bathroom. The leak prevented Johnson from using the shower because the condition of the shower reached a point where the ceiling began to cave in. Johnson stayed in a hotel to use the shower at her expense. As a result, she withheld payment from Kohner Properties, Inc. for up to two months. According to Kohner Properties, Inc., Johnson would only provide times for repair between 6 pm-9 pm, which made it difficult for the plaintiff to fix the water leak. Kohner Properties, Inc. sued for rent possession of the property. The St. Louis County Court determined that Kohner Properties, Inc. could retain possession of the property with the additional payment of the rent but subtracted a portion of the money because of the defendant’s status living outside of the property. Johnson appealed, and the case was taken to the Missouri Court of Appeals.

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<sup>13</sup> *Minnesota Residential Rent and Rental Statistics*. Department of Numbers. (n.d.), <https://www.deptofnumbers.com/rent/minnesota/>

<sup>14</sup> *North Dakota Residential Rent and Rental Statistics*. Department of Numbers, <https://www.deptofnumbers.com/rent/north-dakota/>

<sup>15</sup> *Kohner Properties, Inc. v. Johnson*, Missouri Supreme Court, (2018)



The Missouri Court of Appeals stated that they should not require the defendant to withhold rent money to bring a habitability case. They sent the case to the Missouri Supreme Court. The Missouri Supreme Court decided that the precedent of *King v. Moorhead* (1973) holds that a tenant must pay their landlord rent despite uninhabitable conditions. The Supreme Court affirmed the decision of the lower courts. *The result of this case affirms that tenants cannot withhold rent in cases of landlord negligence but that they can pay the sum to the court or repair the damages and deduct the costs from their rent.*

In an interview with Randall Reinker, managing partner of Reinker, Hamilton & Fenley, LLC, and a representative of Kohner Properties, Inc., Reinker claimed that if a place is uninhabitable, then the tenant should not even be able to physically live in the property. He cited the example that a tenant might complain over a dysfunctional shower and claim the property is uninhabitable, despite the property having two showers. Certain judges, according to him, seem to be receptive to these claims, giving the tenant the opportunity to leave the property. In addition, Reinker argued before the court that rent escrow cases are meant to be rapid since the plaintiff is losing money as time goes on.<sup>16</sup> These concerns will be addressed in our next section.

## Potential Objections

### *Time and Delays*

Time is one of the most common problems landlords face with tenants. When tenants have a problem with the property, they propose times for the landlord to enter the property to assess the situation and make necessary repairs. However, in some circumstances, the tenants may propose time slots that make it difficult for the landlord to enter the residence. While it is completely rational for the tenant to propose time slots that fit their schedule as a way to ensure they have time for work or other activities, it should be noted that in cases of essential systems being unfit for living, there must be accommodations to make the repairs possible. Time constraints make it difficult to remedy repairs needed in residences, and legislation broadening tenants' right to withhold rent is a potential objection from the landlord's perspective.

To assess whether a residence is truly in uninhabitable conditions, the court must first conclude that the place needs necessary repairs. This depends on the state, but it is usually the most common case. The court must send health department officials to confirm if the residency is truly in uninhabitable conditions. As a result, they then establish a third party to receive rent instead of the landlord until the residency is in habitable conditions. The landlord may counter this and propose a hearing to debunk the claims, but that may take up to 60 days. During that time, the landlord is left without any rent money, while the tenant sometimes continues to live in the residence. This proposes a risk to the landlord since they might be required to increase the rent of other good tenants to meet his monetary needs. As a result, this could even add damage to a housing affordability crisis. The delays of this repair timeline cost landlords the income they cease to receive when tenants pay their rent to the court or repair the damages and present another potential objection.

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<sup>16</sup> Reinker, R., (2022, November 15). *Interview with Randall Reinker.*

### *Excessive upgrades*

Another concern over rent escrow is the assumption that tenants may use rent escrow as a means to receive upgrades to their residences. There are worries that the tenant will claim that the residence is “uninhabitable” when in reality, it is in livable condition.

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## Policy Proposal

**Indiana should follow Minnesota’s model for rent escrow**, which details point-by-point the possible scenarios for such a system, instead of leaving it in vague terms as in other states. Rent escrow should be established in the state of Indiana under certain terms and conditions which provide rights for tenants without forgetting the needs of the landlords. While there will be potential objections to this legislation in Indiana, we see the Minnesota model as meeting potential landlord objections and **we encourage Indiana legislators to consider their rent escrow laws as a model for what could work in Indiana**. Renters who find a habitability violation in their dwelling would have to file a written claim with their landlord. Habitability violations will only apply to functions of a rental unit that are deemed essential. Essential functions should include water, heating, electricity, and general health problems (asbestos, mold, etc.). By only allowing essential functions, we avoid situations where tenants take advantage of the law to avoid paying rent for non-essential functions.

We seek a modified version of Indiana Senate Bill 230. Under SB230, landlords would only have twenty four hours to respond to a claim. This is an insufficient amount of time and places an undue burden on the property manager. Under our proposal, landlords would have fourteen calendar days to address the violations in their tenant’s claims. Not only does this timeline balance the needs of tenants and the time of the landlord, but it is also consistent with Minnesota’s rent escrow system. If, after fourteen days, the landlord fails to make the necessary repairs outlined in the claim, a tenant can place their rent into escrow by depositing that month’s payment with the court administrator. If the tenant fixed the problem themselves out of pocket, they could also place the cost of the repair in escrow with the court administrator.

During the escrow process, the tenant must specify what issues the landlord failed to address, along with proof of notice. From there, the court would have to hold a hearing within 10-14 days of receiving the rent in escrow. During this time, the court will send a building inspector to the tenant’s unit to record the claim for the court. If the designated repair is made before the hearing occurs, the court should return the rent from the escrow to the landlord. If the landlord and tenant come to an agreement about how to appropriate that month’s rent, the court should return the money according to the agreement after receiving written notice with both parties’ signatures.

Our rent escrow proposal also includes protections for tenants reporting habitability violations to landlords. Indiana tenants can be evicted from their rental after reporting a violation to their landlord, creating a massive disincentive for tenants to report such problems. Our proposal would ban such retaliatory evictions and would

prevent tenants from being evicted during the review process. These protections would enhance the welfare of tenants and remove the consequences of landlord negligence and/or retaliation.

## **Proposal Details**

### ***Counterclaim for possession***

If the landlord feels that the claims made by the tenant are not valid, they may file to the court a counterclaim to retain possession of the property immediately, as opposed to allowing the tenant to remain in the residence without pay. The hearing must be set between 7 and 14 days. This time slot would allow both parties to prepare their arguments and provide their evidence to the court. Additional time would create a risk for the landlord since they would be losing additional money. If the court believes that the counterclaim has merit, the landlord is free to retain the property, and the tenant must leave the premises within fourteen days, allowing them time to find another residence. If the tenant does not leave the premises within those fourteen days, the landlord could call emergency services to remove the tenant from the residence. If the court believes that the tenant has substantial claims for habitability concerns in the residence, then the court administrator retains the rent of the month until the landlord fixes the problem.

### ***Representation***

If the case goes to trial for any reason whatsoever, then the right to an attorney is established. If either side cannot afford an attorney, then the state is obligated to provide one.

### ***Filing fee***

In opposition to the law in Minnesota, we establish that there should be no filing fee for civil cases or counterclaims of property in this law.

### ***Hearing***

After the tenant deposits his rent money to the court administrator, a court must set a hearing between 10 to 14 days. This hearing is a civil case and is without a jury.

### ***Repairs Met before the Hearing***

If an agreement is made between the parties that the landlord will repair the damages, then the hearing is canceled, since the repairs are to be met. This agreement must be made in writing and submitted to the court for verification. The landlord may request a portion of the rent to make the repairs. When the repairs are met, the court administrator releases the rent money in full to the landlord without any subtraction to the original deposit. However, if the landlord fails to make the repairs under that agreement, then a hearing is to be scheduled between 7 to 14 days after the ending of the promised timeline the landlord would make the repair. If the court finds the landlord to be in violation of his agreement, they can propose appropriate penalties.

### ***Repairs Not Met***

If the repairs are not met, then the judge must decide the case. If the landlord is found in violation of health requirements on the property, they must make the repairs within 18 days. Additional time will be given to the landlord to buy the materials as well as find contractors to make the repairs if necessary but must be approved. The landlord may request that a portion of the rent be released to them to make the repairs. If the landlord does not make the repairs within that time, the court may issue appropriate penalties for a civil case. If further disputes between the landlord and the tenant occur, then the case will go to trial.

### ***Repair and Deduct***

Ind. Code Ann. § 32-31-8-6 provides the tenant rights in regard to repairs but does not establish repair and deduction in the state of Indiana. A tenant must give notice to a landlord regarding damages to the property, and the landlord has 14 days to provide a remedy or make the repairs on the property. Failure to do so can result in a lawsuit by the tenant, where he is able to receive attorney fees and court costs. However, a tenant could be unwilling to take the risk since this approach makes it necessary to have funds to afford an attorney in the first place, and there is no guarantee that he will be reimbursed.

Similar to legislation from North Dakota, we recommend that Indiana pass repair and deduction legislation that would allow all renters and tenants to enter an agreement allowing tenants to make necessary repairs while deducting the costs from their rent. After 14 days of notice, if the landlord does not take action, a tenant may suggest in writing that he can repair the damages on the property and deduct the cost of his rent. The landlord must agree in writing before this process moves forward.

# Expanded Tax Credit Policy

## Legislative Overview

Expansion of tax credit policy in Indiana has been at the forefront of the affordable housing policy agenda during recent legislative sessions. Introduced in January of 2022, authored by Senator Travis Holdman and Senator Linda Rodgers, Senate Bill 262 “provides an affordable and workforce housing state tax credit against state tax liability to a taxpayer for each taxable year in the state tax credit period of a qualified project in an aggregate amount that does not exceed the product of a percentage between 40% and 100% and the amount of the taxpayer’s aggregate federal tax credit for the qualified project.”<sup>17</sup> In another step of expanded tax credit legislation, Senate Bill 236 aimed to adjust the gross income threshold for individuals over and including the age of sixty-five to obtain a deduction from the assessed value of one’s real property.<sup>18</sup> SB236 was co-authored by Senator Travis Holdman, Senator Fady Qaddoura, and Senator Shelli Yoder. It was introduced in January of 2022, but ultimately died in committee. SB236 moved unanimously through the Senate displaying the potential support for similar legislation in the future.

While SB262 and SB236 died in committee, failing to come to fruition for the benefit of Hoosier renters, SB382 was signed into law in March of 2022. Authored by Senator Travis Holdman and Senator Brian Buchanan, SB382 contains provisions for the new Affordable Housing Tax Credit. The Affordable Housing Tax Credit provisioned in SB382 will be available for certain low-income housing projects receiving a federal 4% LIHTC and will be claimed over a period of five taxable years.<sup>19</sup> The Affordable and Workforce Housing Tax Credit program established in SB382 will operate similarly to the historically successful federal Low-Income Housing Tax Credit (LIHTC), with eligible applicants receiving a federal LIHTC. Similar to the federal LIHTC, SB382 incentivizes the development of in-state affordable housing.

## SB382, Low-Income Housing Tax Credits

Established in 1986 under the Tax Reform Act of 1986, the LIHTC allocates state and local agencies approximately \$8 billion annually “to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households.”<sup>20</sup> The LIHTC operates as a key initiative strategy for the preservation and production of affordable rental housing. Through the LIHTC, private investors receive a federal income tax credit as an incentive to make equity investments in affordable rental housing.<sup>21</sup>

<sup>17</sup> Indiana General Assembly, (2022). Senate Bill 262 - Housing Tax Credits, <https://iga.in.gov/legislative/2022/bills/senate/262/>.

<sup>18</sup> Indiana General Assembly, (2022). Senate Bill 236 - Eligibility for Senior Property Tax Deduction, <https://iga.in.gov/legislative/2022/bills/senate/236>.

<sup>19</sup> Essbai, S., (2013, May 4). *Low Income Housing Tax Credits and Neighborhood Change : Case Study of Three Projects in Indianapolis*, <https://cardinalscholar.bsu.edu/handle/123456789/197235?show=full>.

<sup>20</sup> Office of Policy Development and Research (2022). *Low-Income Housing Tax Credit (LIHTC)*, <https://www.huduser.gov/portal/datasets/lihtc.html>.

<sup>21</sup> Butler, S. B., et al., (2022, March 29). *New Indiana Low-Income Housing Tax Credit*, <https://frostbrowntodd.com/new-indiana-low-income-housing-tax-credit/>.



### ***Benefits of Tax Credits as Projected by Federal LIHTC***

SB 382 incorporates the principles of the federal LITC program, offering applicants a federal 4% LIHTC credit. We may anticipate the positive implications on Indiana renters and communities, given the beneficial impacts of LIHTC as a federal program. The federal LIHTC has been reviewed in a variety of diligent case studies. In a 2013 cumulative analysis, Ball State University noted the impact of LIHTC on overall neighborhood development in three Indianapolis projects from 1990 to 2010. The analysis points to positive shifts, including an “...increase in median household income, increase in poverty value and higher educated residents...” in Union Park and West Indianapolis, two of the studied neighborhoods. The study details that the positive shifts were stronger in Urban Park and West Indianapolis—the urban neighborhoods—as opposed to the more suburban neighborhood of Hana Village. The study concludes that there is a correlation between LIHTC and the overall improvement of distressed neighborhoods, in particular those that are mostly urban.

As projected by the historical success of the federal LIHTC, SB382 will serve those most in need. A 2019 analysis of LIHTC’s demographics found that out of 682 properties and 45,562 units (87.6% of properties reported), **an estimated 11.1% of tenants were disabled in some capacity; 41.5% of heads of households were black; 32.7% of heads of households are 62 years of age or older; 35.6% of families have at least one member aged under eighteen; and, the median income of tenants involved in the program is \$16,713.00. *In the most poignant characteristic of LIHTC renters, 45.1% rely upon monthly rental assistance.***<sup>22</sup> The federal LIHTC program supports the individuals and households categorically most vulnerable and in need. The Affordable Housing Tax Credit program introduced in SB382 is projected to do the same.

As projected by the historical success of the federal LIHTC, tax credit legislation is linked to overall increases in housing affordability and racial equity. Individuals of color are more likely to be renters. According to the Urban Institute, an already existing broader federal tax policy “...benefits homeowners who are wealthier, have higher incomes and are disproportionately white. Almost any tax policy that tips the scales back toward renters, including renter credits, would increase economic and racial equity.”<sup>23</sup> Unlike policies favoring homeownership, tax credits for renters offer financial support, opening an opportunity for rent that may not be otherwise available. It is imperative to assess the current housing tax credit system for developers in Indiana. Through the LIHTC, private investors receive a federal income tax credit as an incentive to make equity investments in affordable rental housing.

Tax credit legislation correlates with increases in median household income and housing affordability, with increased education of residents and overall racial equity. Tax credit legislation extends support to uplift the most vulnerable groups (the elderly, the disabled, and persons of color). Tax credit legislation introduces incentives for equity investments in the development of affordable housing.

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<sup>22</sup> Office of Policy Development and Research (2022).

<sup>23</sup> Urban Institute (2022), *Tax Credits for Renters Could Increase Racial and Economic Equity*, <https://www.urban.org/urban-wire/tax-credits-renters-could-increase-racial-and-economic-equity>.

## ***Rebuttal to Opposing Arguments***

Despite its success, there are critical flaws in the LIHTC program, necessary for evaluation and future adjustment. Opponents of the program may note that the LIHTC's benefits tend to reach investors and developers disproportionately to the lowest-income renters. Like many government programs with high goals, the LIHTC is vulnerable to application and engagement fraud. Given the intentional correlation between Indiana's Affordable Housing Tax Credit and the federal LIHTC, it is imperative that these critical flaws in the LIHTC be addressed to ensure that similar flaws do not arise in Indiana's emerging program.

## **State-to-State Comparison**

**Michigan's** homestead property tax credit assists qualified homeowners and renters in paying a portion of property taxes. The state code of Michigan on the matter reads, "...you own or were contracted to pay rent and occupied a Michigan homestead for at least 6 months during the year on which property taxes and/or service fees were levied; if you own your home, your taxable value was \$135,000 or less; if your total household resources were \$60,000 or less."<sup>24</sup> Ineligibility occurs if 100% of total household resources are received from the Michigan Department of Health and Human Services.

**Minnesota** offers a renter's credit, eligible to individuals living at least 183 days prior in the state and below a determined income threshold. A certificate of rent paid (CRP) is required to be presented by the candidate from his or her landlord to be eligible for the credit. We see a positive correlation between a renter proving to have dependents, being over the age of sixty-five, and/or having a disability and his/her qualification status. Such conditions qualify a renter for an increased credit.

**Utah** offers renter's tax credit to widows and widowers of any age as long as they have resided in Utah for one year.

**California** offers a tax credit for renters who have resided in California for even half of a calendar year.

**Hawaii** takes a more direct approach by offering credit to those who make less than \$30,000 a year and pay at least \$1,000 in rent as long as they reside in Hawaii.

In an effort to ease the financial burden of low-income households, most states apply specific parameters for income. Indiana does not, and rather offers credit to any renter who meets the criteria of primary residence and is subject to Indiana property tax. We see a need for more intentional, focused targeting of low-income households.

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<sup>24</sup> State of Michigan, (2022), *Homestead Property Tax Credit Information*, <https://www.michigan.gov/taxes/property/ind-exempt-defer/homestead-property-tax-credit-information>.

## Policy Proposal

*Our team's proposal addresses three elements to expand Indiana's tax credit policy.*

### ***Targeted parameters for qualification***

A criticism of SB382 arises for its arguably broad parameters of qualification. In opening the program to a wide stratum of Indiana residents, the most vulnerable are put at a disadvantage and are less likely to receive the full extent of the program's service. Ideally, Indiana's tax credit will efficiently provide for all those in need of its service; however, with the program in its early phases, it must primarily focus on serving the most vulnerable. This may be achieved by reducing the current parameters of qualifications).

### ***Raise credit allocation for the most vulnerable***

We advise Indiana legislators to look to Minnesota as a guide to determine income threshold eligibility for credit. Within the structure of Minnesota's program, qualifying individuals and households become eligible for a raise in credit if able to prove especially vulnerable. For example, a household with dependents, disabled residents, and/or residents over the age of 65 may be deemed especially vulnerable and, therefore, be eligible for a potential increase in credit. The state of Indiana may consider opening a discussion of incorporating a similar element into its current tax credit programming. Such a program will cater to the most vulnerable.

### ***Incorporated Incentives***

In the state of Illinois', rather than a legislated renter's credit, there exists an *Affordable Housing Tax Credit*, within which we see the state's *Donations Tax Credit* program. Illinois provides "a \$0.50 state income tax credit for each \$1 contributed to a qualified, affordable housing project".<sup>25</sup> Illinois' *Donations Tax Credit* incorporates an incentive into offering credit to donate to a qualifying affordable housing project. Such a program addresses more than one potential solution to the affordable housing crisis. Our team suggests that the state of Indiana consider adopting a similar program.

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<sup>25</sup> City of Chicago, (2022). *Illinois Affordable Housing Tax Credits (Donations Tax Credit)*.

<https://www.chicago.gov/city/en/depts/doh/provdrs/developers/svcs/illinois-affordable-housing-tax-credits--donations-tax-credit-.html>.

## Conclusion

This paper presents the findings of Notre Dame Student Policy Network's semester-long research project on rent escrow policy and an expanded tax credit system as potential solutions for Indiana's affordable housing crisis. Such policies would serve Indiana's renting population as well as support the state's broader housing economy. Moreover, presented in this paper are several proposals of recommendations going forward in the conversation of Indiana's state housing policy. For rent escrow, our team proposes a policy reflective of SB230 but modified to follow the statute currently in place in the state of Minnesota. In the space of expanded tax credit policy, our team finds that Indiana's current tax credit policy may be expanded to introduce an available rise in credit for those most vulnerable, as well as an incorporated incentive for donation. Our team recommends that SB382 serve as a model for expanded tax credit legislation. **We urge the Indiana state legislature to expand its tax credit system and to pass rent escrow legislation in order to protect tenants and their livelihoods in the state of Indiana.**