

ASSEMBLY BILL

No. 952

Introduced by Assembly Member Atkins

February 22, 2013

An act to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 952, as introduced, Atkins. Low-income housing tax credits.

Existing law establishes a low-income housing tax credit program, administered by the California Tax Credit Allocation Committee, which provides procedures and requirements for the allocation of state tax credit amounts among low-income housing projects based on federal law, as modified. Existing law, among other things, allows the credit based on the applicable percentage, as defined.

Existing insurance taxation law prohibits a credit from being allocated under this law to buildings located in a difficult development area or a qualified census tract, as defined, for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130% of a specified amount, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit does not exceed the total credit allowable pursuant to this section and the Internal Revenue Code.

The Personal Income Tax Law and the Corporation Tax Law allow a credit for buildings located in designated difficult development areas or qualified census tracts, as defined, allocated in specified amounts, provided that the amount of credit allocated under the Section 42 of the

Internal Revenue Code is computed on 100% of the qualified basis of the building.

This bill would, under the insurance taxation law, allow a credit for buildings located in designated difficult development areas or qualified census tracts allocated in the specified amounts, provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100% of the qualified basis of the building.

This bill would, under insurance taxation law, the Personal Income Tax Law, and the Corporation Tax Law, authorize the California Tax Credit Allocation Committee to allocate a credit for buildings located in designated difficult development areas or qualified census tracts that are restricted to having 100% of its occupants be special needs households, as defined, even if the taxpayer receives specified federal credits, if the credit allowed under this section does not exceed 30% of the eligible basis of that building. This bill would, for purposes of all 3 laws, allow the California Tax Credit Allocation Committee to exchange federal low-income housing credits for state low-income housing credits, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12206 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 12206. (a) (1) There shall be allowed as a credit against the
- 4 "tax" (as defined by Section 12201) a state low-income housing
- 5 tax credit in an amount equal to the amount determined in
- 6 subdivision (c), computed in accordance with Section 42 of the
- 7 Internal Revenue Code, except as otherwise provided in this
- 8 section.
- 9 (2) "Taxpayer," for purposes of this section, means the sole
- 10 owner in the case of a "C" corporation, the partners in the case of
- 11 a partnership, and the shareholders in the case of an "S"
- 12 corporation.
- 13 (3) "Housing sponsor," for purposes of this section, means the
- 14 sole owner in the case of a "C" corporation, the partnership in the
- 15 case of a partnership, and the "S" corporation in the case of an "S"
- 16 corporation.

1 (b) (1) The amount of the credit allocated to any housing
2 sponsor shall be authorized by the California Tax Credit Allocation
3 Committee, or any successor thereof, based on a project's need
4 for the credit for economic feasibility in accordance with the
5 requirements of this section.

6 (A) Except for projects to provide farmworker housing, as
7 defined in subdivision (h) of Section 50199.7 of the Health and
8 Safety Code, that are allocated credits solely under the set-aside
9 described in subdivision (c) of Section 50199.20 of the Health and
10 Safety Code, the low-income housing project shall be located in
11 California and shall meet either of the following requirements:

12 (i) The project's housing sponsor shall have been allocated by
13 the California Tax Credit Allocation Committee a credit for federal
14 income tax purposes under Section 42 of the Internal Revenue
15 Code.

16 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the
17 Internal Revenue Code.

18 (B) The California Tax Credit Allocation Committee shall not
19 require fees for the credit under this section in addition to those
20 fees required for applications for the tax credit pursuant to Section
21 42 of the Internal Revenue Code. The committee may require a
22 fee if the application for the credit under this section is submitted
23 in a calendar year after the year the application is submitted for
24 the federal tax credit.

25 (C) (i) For a project that receives a preliminary reservation of
26 the state low-income housing tax credit, allowed pursuant to
27 subdivision (a), on or after January 1, 2009, and before January 1,
28 2016, the credit shall be allocated to the partners of a partnership
29 owning the project in accordance with the partnership agreement,
30 regardless of how the federal low-income housing tax credit with
31 respect to the project is allocated to the partners, or whether the
32 allocation of the credit under the terms of the agreement has
33 substantial economic effect, within the meaning of Section 704(b)
34 of the Internal Revenue Code.

35 (ii) This subparagraph shall not apply to a project that receives
36 a preliminary reservation of state low-income housing tax credits
37 under the set-aside described in subdivision (c) of Section 50199.20
38 of the Health and Safety Code unless the project also receives a
39 preliminary reservation of federal low-income housing tax credits.

1 (iii) This subparagraph shall cease to be operative with respect
 2 to any project that receives a preliminary reservation of a credit
 3 on or after January 1, 2016.

4 (2) (A) The California Tax Credit Allocation Committee shall
 5 certify to the housing sponsor the amount of tax credit under this
 6 section allocated to the housing sponsor for each credit period.

7 (B) In the case of a partnership or an “S” corporation, the
 8 housing sponsor shall provide a copy of the California Tax Credit
 9 Allocation Committee certification to the taxpayer.

10 (C) The taxpayer shall attach a copy of the certification to any
 11 return upon which a tax credit is claimed under this section.

12 (D) In the case of a failure to attach a copy of the certification
 13 for the year to the return in which a tax credit is claimed under this
 14 section, no credit under this section shall be allowed for that year
 15 until a copy of that certification is provided.

16 (E) All elections made by the taxpayer pursuant to Section 42
 17 of the Internal Revenue Code shall apply to this section.

18 ~~(F) No credit shall be allocated under this section to buildings~~
 19 ~~located in a difficult development area or a qualified census tract~~
 20 ~~as defined in Section 42 of the Internal Revenue Code for which~~
 21 ~~the eligible basis of a new building or the rehabilitation expenditure~~
 22 ~~of an existing building is 130 percent of that amount pursuant to~~
 23 ~~Section 42(d)(5)(C) of the Internal Revenue Code, unless the~~
 24 ~~committee reduces the amount of federal credit, with the approval~~
 25 ~~of the applicant, so that the combined amount of federal and state~~
 26 ~~credit shall not exceed the total credit allowable pursuant to this~~
 27 ~~section and Section 42(b) of the Internal Revenue Code, computed~~
 28 ~~without regard to Section 42(d)(5)(C) of the Internal Revenue~~
 29 ~~Code.~~

30 *(F) (i) Except as described in clause (ii), for buildings located*
 31 *in designated difficult development areas (DDAs) or qualified*
 32 *census tracts (QCTs) as defined in Section 42(d)(5)(B) of the*
 33 *Internal Revenue Code, credits may be allocated under this section*
 34 *in the amounts prescribed in subdivision (c), provided that the*
 35 *amount of credit allocated under Section 42 of the Internal Revenue*
 36 *Code is computed on 100 percent of the qualified basis of the*
 37 *building.*

38 *(ii) Notwithstanding clause (i), the California Tax Credit*
 39 *Allocation Committee may allocated the credit for buildings located*
 40 *in DDAs or QCTs that are restricted to having 100 percent of its*

1 *occupants be special needs households, as defined in the California*
2 *Code of Regulations by the California Tax Credit Allocation*
3 *Committee, even if the taxpayer receives federal credits pursuant*
4 *to Section 42(d)(5)(B) of the Internal Revenue Code, provided that*
5 *the credit allowed under this section shall not exceed 30 percent*
6 *of the eligible basis of the building.*

7 *(iii) (I) The California Tax Credit Allocation Committee may*
8 *allocate a credit under this section in exchange for a credit*
9 *allocated pursuant to Section 42(d)(5)(B) of the Internal Revenue*
10 *Code in amounts up to 30 percent of the eligible basis of a building*
11 *if the credits allowed Section 42 of the Internal Revenue Code are*
12 *reduced by an equivalent amount.*

13 *(II) Equivalent amounts shall be determined by the California*
14 *Tax Credit Allocation Committee based upon the relative amounts*
15 *required to produce an equivalent tax credit to the taxpayer.*

16 (c) Section 42(b) of the Internal Revenue Code shall be modified
17 as follows:

18 (1) In the case of any qualified low-income building that receives
19 an allocation after 1989 and is a new building not federally
20 subsidized, the term “applicable percentage” means the following:

21 (A) For each of the first three years, the percentage prescribed
22 by the Secretary of the Treasury for new buildings that are not
23 federally subsidized for the taxable year, determined in accordance
24 with the requirements of Section 42(b)(2) of the Internal Revenue
25 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
26 of the Internal Revenue Code.

27 (B) For the fourth year, the difference between 30 percent and
28 the sum of the applicable percentages for the first three years.

29 (2) In the case of any qualified low-income building that receives
30 an allocation after 1989 and that is a new building that is federally
31 subsidized or that is an existing building that is “at risk of
32 conversion,” the term “applicable percentage” means the following:

33 (A) For each of the first three years, the percentage prescribed
34 by the Secretary of the Treasury for new buildings that are federally
35 subsidized for the taxable year.

36 (B) For the fourth year, the difference between 13 percent and
37 the sum of the applicable percentages for the first three years.

38 (3) For purposes of this section, the term “at risk of conversion,”
39 with respect to an existing property means a property that satisfies
40 all of the following criteria:

1 (A) The property is a multifamily rental housing development
2 in which at least 50 percent of the units receive governmental
3 assistance pursuant to any of the following:

4 (i) New construction, substantial rehabilitation, moderate
5 rehabilitation, property disposition, and loan management set-aside
6 programs, or any other program providing project-based assistance
7 pursuant to Section 8 of the United States Housing Act of 1937,
8 Section 1437f of Title 42 of the United States Code, as amended.

9 (ii) The Below-Market-Interest-Rate Program pursuant to
10 Section 221(d)(3) of the National Housing Act, Sections
11 1715l(d)(3) and (5) of Title 12 of the United States Code.

12 (iii) Section 236 of the National Housing Act, Section 1715z-1
13 of Title 12 of the United States Code.

14 (iv) Programs for rent supplement assistance pursuant to Section
15 101 of the Housing and Urban Development Act of 1965, Section
16 1701s of Title 12 of the United States Code, as amended.

17 (v) Programs pursuant to Section 515 of the Housing Act of
18 1949, Section 1485 of Title 42 of the United States Code, as
19 amended.

20 (vi) The low-income housing credit program set forth in Section
21 42 of the Internal Revenue Code.

22 (B) The restrictions on rent and income levels will terminate or
23 the federal insured mortgage on the property is eligible for
24 prepayment any time within five years before or after the date of
25 application to the California Tax Credit Allocation Committee.

26 (C) The entity acquiring the property enters into a regulatory
27 agreement that requires the property to be operated in accordance
28 with the requirements of this section for a period equal to the
29 greater of 55 years or the life of the property.

30 (D) The property satisfies the requirements of Section 42(e) of
31 the Internal Revenue Code regarding rehabilitation expenditures,
32 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
33 apply.

34 (d) The term “qualified low-income housing project” as defined
35 in Section 42(c)(2) of the Internal Revenue Code is modified by
36 adding the following requirements:

37 (1) The taxpayer shall be entitled to receive a cash distribution
38 from the operations of the project, after funding required reserves,
39 which, at the election of the taxpayer, is equal to:

40 (A) An amount not to exceed 8 percent of the lesser of:

1 (i) The owner equity which shall include the amount of the
2 capital contributions actually paid to the housing sponsor and shall
3 not include any amounts until they are paid on an investor note.

4 (ii) Twenty percent of the adjusted basis of the building as of
5 the close of the first taxable year of the credit period.

6 (B) The amount of the cashflow from those units in the building
7 that are not low-income units. For purposes of computing cashflow
8 under this subparagraph, operating costs shall be allocated to the
9 low-income units using the “floor space fraction,” as defined in
10 Section 42 of the Internal Revenue Code.

11 (C) Any amount allowed to be distributed under subparagraph
12 (A) that is not available for distribution during the first five years
13 of the compliance period may accumulate and be distributed any
14 time during the first 15 years of the compliance period but not
15 thereafter.

16 (2) The limitation on return shall apply in the aggregate to the
17 partners if the housing sponsor is a partnership and in the aggregate
18 to the shareholders if the housing sponsor is an “S” corporation.

19 (3) The housing sponsor shall apply any cash available for
20 distribution in excess of the amount eligible to be distributed under
21 paragraph (1) to reduce the rent on rent-restricted units or to
22 increase the number of rent-restricted units subject to the tests of
23 Section 42(g)(1) of the Internal Revenue Code.

24 (e) The provisions of Section 42(f) of the Internal Revenue Code
25 shall be modified as follows:

26 (1) The term “credit period” as defined in Section 42(f)(1) of
27 the Internal Revenue Code is modified by substituting “four taxable
28 years” for “10 taxable years.”

29 (2) The special rule for the first taxable year of the credit period
30 under Section 42(f)(2) of the Internal Revenue Code shall not apply
31 to the tax credit under this section.

32 (3) Section 42(f)(3) of the Internal Revenue Code is modified
33 to read:

34 If, as of the close of any taxable year in the compliance period,
35 after the first year of the credit period, the qualified basis of any
36 building exceeds the qualified basis of that building as of the close
37 of the first year of the credit period, the housing sponsor, to the
38 extent of its tax credit allocation, shall be eligible for a credit on
39 the excess in an amount equal to the applicable percentage
40 determined pursuant to subdivision (c) for the four-year period

1 beginning with the later of the taxable years in which the increase
 2 in qualified basis occurs.

3 (f) The provisions of Section 42(h) of the Internal Revenue
 4 Code shall be modified as follows:

5 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
 6 applicable and instead the following provisions shall be applicable:

7 The total amount for the four-year credit period of the housing
 8 credit dollars allocated in a calendar year to any building shall
 9 reduce the aggregate housing credit dollar amount of the California
 10 Tax Credit Allocation Committee for the calendar year in which
 11 the allocation is made.

12 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
 13 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
 14 not be applicable.

15 (g) The aggregate housing credit dollar amount that may be
 16 allocated annually by the California Tax Credit Allocation
 17 Committee pursuant to this section, Section 17058, and Section
 18 23610.5 shall be an amount equal to the sum of all the following:

19 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
 20 year, and, for the 2002 calendar year and each calendar year
 21 thereafter, seventy million dollars (\$70,000,000) increased by the
 22 percentage, if any, by which the Consumer Price Index for the
 23 preceding calendar year exceeds the Consumer Price Index for the
 24 2001 calendar year. For the purposes of this paragraph, the term
 25 “Consumer Price Index” means the last Consumer Price Index for
 26 all urban consumers published by the federal Department of Labor.

27 (2) The unused housing credit ceiling, if any, for the preceding
 28 calendar years.

29 (3) The amount of housing credit ceiling returned in the calendar
 30 year. For purposes of this paragraph, the amount of housing credit
 31 dollar amount returned in the calendar year equals the housing
 32 credit dollar amount previously allocated to any project that does
 33 not become a qualified low-income housing project within the
 34 period required by this section or to any project with respect to
 35 which an allocation is canceled by mutual consent of the California
 36 Tax Credit Allocation Committee and the allocation recipient.

37 (4) Five hundred thousand dollars (\$500,000) per calendar year
 38 for projects to provide farmworker housing, as defined in
 39 subdivision (h) of Section 50199.7 of the Health and Safety Code.

1 (5) The amount of any unallocated or returned credits under
2 former Sections 17053.14, 23608.2, and 23608.3, as those sections
3 read prior to January 1, 2009, until fully exhausted for projects to
4 provide farmworker housing, as defined in subdivision (h) of
5 Section 50199.7 of the Health and Safety Code.

6 (h) The term “compliance period” as defined in Section 42(i)(1)
7 of the Internal Revenue Code is modified to mean, with respect to
8 any building, the period of 30 consecutive taxable years beginning
9 with the first taxable year of the credit period with respect thereto.

10 (i) (1) Section 42(j) of the Internal Revenue Code shall not be
11 applicable and the provisions in paragraph (2) shall be substituted
12 in its place.

13 (2) The requirements of this section shall be set forth in a
14 regulatory agreement between the California Tax Credit Allocation
15 Committee and the housing sponsor, which agreement shall be
16 subordinated, when required, to any lien or encumbrance of any
17 banks or other institutional lenders to the project. The regulatory
18 agreement entered into pursuant to subdivision (f) of Section
19 50199.14 of the Health and Safety Code, shall apply, providing
20 the agreement includes all of the following provisions:

21 (A) A term not less than the compliance period.

22 (B) A requirement that the agreement be filed in the official
23 records of the county in which the qualified low-income housing
24 project is located.

25 (C) A provision stating which state and local agencies can
26 enforce the regulatory agreement in the event the housing sponsor
27 fails to satisfy any of the requirements of this section.

28 (D) A provision that the regulatory agreement shall be deemed
29 a contract enforceable by tenants as third-party beneficiaries thereto
30 and which allows individuals, whether prospective, present, or
31 former occupants of the building, who meet the income limitation
32 applicable to the building, the right to enforce the regulatory
33 agreement in any state court.

34 (E) A provision incorporating the requirements of Section 42
35 of the Internal Revenue Code as modified by this section.

36 (F) A requirement that the housing sponsor notify the California
37 Tax Credit Allocation Committee or its designee and the local
38 agency that can enforce the regulatory agreement if there is a
39 determination by the Internal Revenue Service that the project is
40 not in compliance with Section 42(g) of the Internal Revenue Code.

1 (G) A requirement that the housing sponsor, as security for the
2 performance of the housing sponsor’s obligations under the
3 regulatory agreement, assign the housing sponsor’s interest in rents
4 that it receives from the project, provided that until there is a
5 default under the regulatory agreement, the housing sponsor is
6 entitled to collect and retain the rents.

7 (H) The remedies available in the event of a default under the
8 regulatory agreement that is not cured within a reasonable cure
9 period, include, but are not limited to, allowing any of the parties
10 designated to enforce the regulatory agreement to collect all rents
11 with respect to the project; taking possession of the project and
12 operating the project in accordance with the regulatory agreement
13 until the enforcer determines the housing sponsor is in a position
14 to operate the project in accordance with the regulatory agreement;
15 applying to any court for specific performance; securing the
16 appointment of a receiver to operate the project; or any other relief
17 as may be appropriate.

18 (j) (1) The committee shall allocate the housing credit on a
19 regular basis consisting of two or more periods in each calendar
20 year during which applications may be filed and considered. The
21 committee shall establish application filing deadlines, the maximum
22 percentage of federal and state low-income housing tax credit
23 ceiling which may be allocated by the committee in that period,
24 and the approximate date on which allocations shall be made. If
25 the enactment of federal or state law, the adoption of rules or
26 regulations, or other similar events prevent the use of two allocation
27 periods, the committee may reduce the number of periods and
28 adjust the filing deadlines, maximum percentage of credit allocated,
29 and the allocation dates.

30 (2) The committee shall adopt a qualified allocation plan, as
31 provided in Section 42(m)(1) of the Internal Revenue Code. In
32 adopting this plan, the committee shall comply with the provisions
33 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
34 Code.

35 (3) Notwithstanding Section 42(m) of the Internal Revenue
36 Code, the California Tax Credit Allocation Committee shall
37 allocate housing credits in accordance with the qualified allocation
38 plan and regulations, which shall include the following provisions:

39 (A) All housing sponsors, as defined by paragraph (3) of
40 subdivision (a), shall demonstrate at the time the application is

1 filed with the committee that the project meets the following
2 threshold requirements:

3 (i) The housing sponsor shall demonstrate there is a need and
4 demand for low-income housing in the community or region for
5 which it is proposed.

6 (ii) The project's proposed financing, including tax credit
7 proceeds, shall be sufficient to complete the project and that the
8 proposed operating income shall be adequate to operate the project
9 for the extended use period.

10 (iii) The project shall have enforceable financing commitments,
11 either construction or permanent financing, for at least 50 percent
12 of the total estimated financing of the project.

13 (iv) The housing sponsor shall have and maintain control of the
14 site for the project.

15 (v) The housing sponsor shall demonstrate that the project
16 complies with all applicable local land use and zoning ordinances.

17 (vi) The housing sponsor shall demonstrate that the project
18 development team has the experience and the financial capacity
19 to ensure project completion and operation for the extended use
20 period.

21 (vii) The housing sponsor shall demonstrate the amount of tax
22 credit that is necessary for the financial feasibility of the project
23 and its viability as a qualified low-income housing project
24 throughout the extended use period, taking into account operating
25 expenses, a supportable debt service, reserves, funds set aside for
26 rental subsidies, and required equity, and a development fee that
27 does not exceed a specified percentage of the eligible basis of the
28 project prior to inclusion of the development fee in the eligible
29 basis, as determined by the committee.

30 (B) The committee shall give a preference to those projects
31 satisfying all of the threshold requirements of subparagraph (A)
32 if both of the following apply:

33 (i) The project serves the lowest income tenants at rents
34 affordable to those tenants.

35 (ii) The project is obligated to serve qualified tenants for the
36 longest period.

37 (C) In addition to the provisions of subparagraphs (A) and (B),
38 the committee shall use the following criteria in allocating housing
39 credits:

1 (i) Projects serving large families in which a substantial number,
2 as defined by the committee, of all residential units is comprised
3 of low-income units with three and more bedrooms.

4 (ii) Projects providing single room occupancy units serving very
5 low income tenants.

6 (iii) Existing projects that are “at risk of conversion,” as defined
7 by paragraph (3) of subdivision (c).

8 (iv) Projects for which a public agency provides direct or indirect
9 long-term financial support for at least 15 percent of the total
10 project development costs or projects for which the owner’s equity
11 constitutes at least 30 percent of the total project development
12 costs.

13 (v) Projects that provide tenant amenities not generally available
14 to residents of low-income housing projects.

15 (4) For purposes of allocating credits pursuant to this section,
16 the committee shall not give preference to any project by virtue
17 of the date of submission of its application except to break a tie
18 when two or more of the projects have an equal rating.

19 (k) Section 42(l) of the Internal Revenue Code shall be modified
20 as follows:

21 The term “secretary” shall be replaced by the term “California
22 Franchise Tax Board.”

23 (l) In the case where the state credit allowed under this section
24 exceeds the “tax,” the excess may be carried over to reduce the
25 “tax” in the following year, and succeeding years if necessary,
26 until the credit has been exhausted.

27 (m) The provisions of Section 11407(a) of Public Law 101-508,
28 relating to the effective date of the extension of the low-income
29 housing credit, shall apply to calendar years after 1993.

30 (n) The provisions of Section 11407(c) of Public Law 101-508,
31 relating to election to accelerate credit, shall not apply.

32 (o) This section shall remain in effect for as long as Section 42
33 of the Internal Revenue Code, relating to low-income housing
34 credits, remains in effect.

35 SEC. 2. Section 17058 of the Revenue and Taxation Code is
36 amended to read:

37 17058. (a) (1) There shall be allowed as a credit against the
38 amount of net tax (as defined in Section 17039) a state low-income
39 housing credit in an amount equal to the amount determined in
40 subdivision (c), computed in accordance with the provisions of

1 Section 42 of the Internal Revenue Code, except as otherwise
2 provided in this section.

3 (2) “Taxpayer” for purposes of this section means the sole owner
4 in the case of an individual, the partners in the case of a partnership,
5 and the shareholders in the case of an “S” corporation.

6 (3) “Housing sponsor” for purposes of this section means the
7 sole owner in the case of an individual, the partnership in the case
8 of a partnership, and the “S” corporation in the case of an “S”
9 corporation.

10 (b) (1) The amount of the credit allocated to any housing
11 sponsor shall be authorized by the California Tax Credit Allocation
12 Committee, or any successor thereof, based on a project’s need
13 for the credit for economic feasibility in accordance with the
14 requirements of this section.

15 (A) The low-income housing project shall be located in
16 California and shall meet either of the following requirements:

17 (i) Except for projects to provide farmworker housing, as defined
18 in subdivision (h) of Section 50199.7 of the Health and Safety
19 Code, that are allocated credits solely under the set-aside described
20 in subdivision (c) of Section 50199.20 of the Health and Safety
21 Code, the project’s housing sponsor shall have been allocated by
22 the California Tax Credit Allocation Committee a credit for federal
23 income tax purposes under Section 42 of the Internal Revenue
24 Code.

25 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the
26 Internal Revenue Code.

27 (B) The California Tax Credit Allocation Committee shall not
28 require fees for the credit under this section in addition to those
29 fees required for applications for the tax credit pursuant to Section
30 42 of the Internal Revenue Code. The committee may require a
31 fee if the application for the credit under this section is submitted
32 in a calendar year after the year the application is submitted for
33 the federal tax credit.

34 (C) (i) For a project that receives a preliminary reservation of
35 the state low-income housing tax credit, allowed pursuant to
36 subdivision (a), on or after January 1, 2009, and before January 1,
37 2016, the credit shall be allocated to the partners of a partnership
38 owning the project in accordance with the partnership agreement,
39 regardless of how the federal low-income housing tax credit with
40 respect to the project is allocated to the partners, or whether the

1 allocation of the credit under the terms of the agreement has
2 substantial economic effect, within the meaning of Section 704(b)
3 of the Internal Revenue Code.

4 (ii) To the extent the allocation of the credit to a partner under
5 this section lacks substantial economic effect, any loss or deduction
6 otherwise allowable under this part that is attributable to the sale
7 or other disposition of that partner’s partnership interest made prior
8 to the expiration of the federal credit shall not be allowed in the
9 taxable year in which the sale or other disposition occurs, but shall
10 instead be deferred until and treated as if it occurred in the first
11 taxable year immediately following the taxable year in which the
12 federal credit period expires for the project described in clause (i).

13 (iii) This subparagraph shall not apply to a project that receives
14 a preliminary reservation of state low-income housing tax credits
15 under the set-aside described in subdivision (c) of Section 50199.20
16 of the Health and Safety Code unless the project also receives a
17 preliminary reservation of federal low-income housing tax credits.

18 (iv) This subparagraph shall cease to be operative with respect
19 to any project that receives a preliminary reservation of a credit
20 on or after January 1, 2016.

21 (2) (A) The California Tax Credit Allocation Committee shall
22 certify to the housing sponsor the amount of tax credit under this
23 section allocated to the housing sponsor for each credit period.

24 (B) In the case of a partnership or an “S” corporation, the
25 housing sponsor shall provide a copy of the California Tax Credit
26 Allocation Committee certification to the taxpayer.

27 (C) The taxpayer shall, upon request, provide a copy of the
28 certification to the Franchise Tax Board.

29 (D) All elections made by the taxpayer pursuant to Section 42
30 of the Internal Revenue Code shall apply to this section.

31 (E) ~~For~~ (i) *Except as described in clause (ii), for buildings*
32 *located in designated difficult development areas (DDAs) or*
33 *qualified census tracts (QCTs) as defined in Section ~~42(d)(5)(C)~~*
34 *42(d)(5)(B) of the Internal Revenue Code, credits may be allocated*
35 *under this section in the amounts prescribed in subdivision (c),*
36 *provided that the amount of credit allocated under Section 42 of*
37 *the Internal Revenue Code is computed on 100 percent of the*
38 *qualified basis of the building.*

39 (ii) *Notwithstanding clause (i), the California Tax Credit*
40 *Allocation Committee may allocated the credit for buildings located*

1 *in DDAs or QCTs that are restricted to having 100 percent of its*
2 *occupants be special needs households, as defined in the California*
3 *Code of Regulations by the California Tax Credit Allocation*
4 *Committee, even if the taxpayer receives federal credits pursuant*
5 *to Section 42(d)(5)(B) of the Internal Revenue Code, provided that*
6 *the credit allowed under this section shall not exceed 30 percent*
7 *of the eligible basis of the building.*

8 *(iii) (I) The California Tax Credit Allocation Committee may*
9 *allocate a credit under this section in exchange for a credit*
10 *allocated pursuant to Section 42(d)(5)(B) of the Internal Revenue*
11 *Code in amounts up to 30 percent of the eligible basis of a building*
12 *if the credits allowed Section 42 of the Internal Revenue Code are*
13 *reduced by an equivalent amount.*

14 *(II) Equivalent amounts shall be determined by the California*
15 *Tax Credit Allocation Committee based upon the relative amounts*
16 *required to produce an equivalent tax credit to the taxpayer.*

17 (c) Section 42(b) of the Internal Revenue Code shall be modified
18 as follows:

19 (1) In the case of any qualified low-income building placed in
20 service by the housing sponsor during 1987, the term “applicable
21 percentage” means 9 percent for each of the first three years and
22 3 percent for the fourth year for new buildings (whether or not the
23 building is federally subsidized) and for existing buildings.

24 (2) In the case of any qualified low-income building that receives
25 an allocation after 1989 and is a new building not federally
26 subsidized, the term “applicable percentage” means the following:

27 (A) For each of the first three years, the percentage prescribed
28 by the Secretary of the Treasury for new buildings that are not
29 federally subsidized for the taxable year, determined in accordance
30 with the requirements of Section 42(b)(2) of the Internal Revenue
31 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
32 of the Internal Revenue Code.

33 (B) For the fourth year, the difference between 30 percent and
34 the sum of the applicable percentages for the first three years.

35 (3) In the case of any qualified low-income building that receives
36 an allocation after 1989 and that is a new building that is federally
37 subsidized or that is an existing building that is “at risk of
38 conversion,” the term “applicable percentage” means the following:

- 1 (A) For each of the first three years, the percentage prescribed
2 by the Secretary of the Treasury for new buildings that are federally
3 subsidized for the taxable year.
- 4 (B) For the fourth year, the difference between 13 percent and
5 the sum of the applicable percentages for the first three years.
- 6 (4) For purposes of this section, the term “at risk of conversion,”
7 with respect to an existing property means a property that satisfies
8 all of the following criteria:
- 9 (A) The property is a multifamily rental housing development
10 in which at least 50 percent of the units receive governmental
11 assistance pursuant to any of the following:
- 12 (i) New construction, substantial rehabilitation, moderate
13 rehabilitation, property disposition, and loan management set-aside
14 programs, or any other program providing project-based assistance
15 pursuant to Section 8 of the United States Housing Act of 1937,
16 Section 1437f of Title 42 of the United States Code, as amended.
- 17 (ii) The Below-Market-Interest-Rate Program pursuant to
18 Section 221(d)(3) of the National Housing Act, Sections
19 1715l(d)(3) and (5) of Title 12 of the United States Code.
- 20 (iii) Section 236 of the National Housing Act, Section 1715z-1
21 of Title 12 of the United States Code.
- 22 (iv) Programs for rent supplement assistance pursuant to Section
23 101 of the Housing and Urban Development Act of 1965, Section
24 1701s of Title 12 of the United States Code, as amended.
- 25 (v) Programs pursuant to Section 515 of the Housing Act of
26 1949, Section 1485 of Title 42 of the United States Code, as
27 amended.
- 28 (vi) The low-income housing credit program set forth in Section
29 42 of the Internal Revenue Code.
- 30 (B) The restrictions on rent and income levels will terminate or
31 the federal insured mortgage on the property is eligible for
32 prepayment any time within five years before or after the date of
33 application to the California Tax Credit Allocation Committee.
- 34 (C) The entity acquiring the property enters into a regulatory
35 agreement that requires the property to be operated in accordance
36 with the requirements of this section for a period equal to the
37 greater of 55 years or the life of the property.
- 38 (D) The property satisfies the requirements of Section 42(e) of
39 the Internal Revenue Code regarding rehabilitation expenditures,

1 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
2 apply.

3 (d) The term “qualified low-income housing project” as defined
4 in Section 42(c)(2) of the Internal Revenue Code is modified by
5 adding the following requirements:

6 (1) The taxpayer shall be entitled to receive a cash distribution
7 from the operations of the project, after funding required reserves,
8 that, at the election of the taxpayer, is equal to:

9 (A) An amount not to exceed 8 percent of the lesser of:

10 (i) The owner equity that shall include the amount of the capital
11 contributions actually paid to the housing sponsor and shall not
12 include any amounts until they are paid on an investor note.

13 (ii) Twenty percent of the adjusted basis of the building as of
14 the close of the first taxable year of the credit period.

15 (B) The amount of the cashflow from those units in the building
16 that are not low-income units. For purposes of computing cashflow
17 under this subparagraph, operating costs shall be allocated to the
18 low-income units using the “floor space fraction,” as defined in
19 Section 42 of the Internal Revenue Code.

20 (C) Any amount allowed to be distributed under subparagraph
21 (A) that is not available for distribution during the first five years
22 of the compliance period may be accumulated and distributed any
23 time during the first 15 years of the compliance period but not
24 thereafter.

25 (2) The limitation on return shall apply in the aggregate to the
26 partners if the housing sponsor is a partnership and in the aggregate
27 to the shareholders if the housing sponsor is an “S” corporation.

28 (3) The housing sponsor shall apply any cash available for
29 distribution in excess of the amount eligible to be distributed under
30 paragraph (1) to reduce the rent on rent-restricted units or to
31 increase the number of rent-restricted units subject to the tests of
32 Section 42(g)(1) of the Internal Revenue Code.

33 (e) The provisions of Section 42(f) of the Internal Revenue Code
34 shall be modified as follows:

35 (1) The term “credit period” as defined in Section 42(f)(1) of
36 the Internal Revenue Code is modified by substituting “four taxable
37 years” for “10 taxable years.”

38 (2) The special rule for the first taxable year of the credit period
39 under Section 42(f)(2) of the Internal Revenue Code shall not apply
40 to the tax credit under this section.

1 (3) Section 42(f)(3) of the Internal Revenue Code is modified
2 to read:

3 If, as of the close of any taxable year in the compliance period,
4 after the first year of the credit period, the qualified basis of any
5 building exceeds the qualified basis of that building as of the close
6 of the first year of the credit period, the housing sponsor, to the
7 extent of its tax credit allocation, shall be eligible for a credit on
8 the excess in an amount equal to the applicable percentage
9 determined pursuant to subdivision (c) for the four-year period
10 beginning with the taxable year in which the increase in qualified
11 basis occurs.

12 (f) The provisions of Section 42(h) of the Internal Revenue
13 Code shall be modified as follows:

14 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
15 applicable and instead the following provisions shall be applicable:

16 The total amount for the four-year period of the housing credit
17 dollars allocated in a calendar year to any building shall reduce
18 the aggregate housing credit dollar amount of the California Tax
19 Credit Allocation Committee for the calendar year in which the
20 allocation is made.

21 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
22 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
23 not be applicable to this section.

24 (g) The aggregate housing credit dollar amount which may be
25 allocated annually by the California Tax Credit Allocation
26 Committee pursuant to this section, Section 12206, and Section
27 23610.5 shall be an amount equal to the sum of all the following:

28 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
29 year, and, for the 2002 calendar year and each calendar year
30 thereafter, seventy million dollars (\$70,000,000) increased by the
31 percentage, if any, by which the Consumer Price Index for the
32 preceding calendar year exceeds the Consumer Price Index for the
33 2001 calendar year. For the purposes of this paragraph, the term
34 “Consumer Price Index” means the last Consumer Price Index for
35 all urban consumers published by the federal Department of Labor.

36 (2) The unused housing credit ceiling, if any, for the preceding
37 calendar years.

38 (3) The amount of housing credit ceiling returned in the calendar
39 year. For purposes of this paragraph, the amount of housing credit
40 dollar amount returned in the calendar year equals the housing

1 credit dollar amount previously allocated to any project that does
2 not become a qualified low-income housing project within the
3 period required by this section or to any project with respect to
4 which an allocation is canceled by mutual consent of the California
5 Tax Credit Allocation Committee and the allocation recipient.

6 (4) Five hundred thousand dollars (\$500,000) per calendar year
7 for projects to provide farmworker housing, as defined in
8 subdivision (h) of Section 50199.7 of the Health and Safety Code.

9 (5) The amount of any unallocated or returned credits under
10 former Sections 17053.14, 23608.2, and 23608.3, as those sections
11 read prior to January 1, 2009, until fully exhausted for projects to
12 provide farmworker housing, as defined in subdivision (h) of
13 Section 50199.7 of the Health and Safety Code.

14 (h) The term “compliance period” as defined in Section 42(i)(1)
15 of the Internal Revenue Code is modified to mean, with respect to
16 any building, the period of 30 consecutive taxable years beginning
17 with the first taxable year of the credit period with respect thereto.

18 (i) Section 42(j) of the Internal Revenue Code shall not be
19 applicable and the following requirements of this section shall be
20 set forth in a regulatory agreement between the California Tax
21 Credit Allocation Committee and the housing sponsor, which
22 agreement shall be subordinated, when required, to any lien or
23 encumbrance of any banks or other institutional lenders to the
24 project. The regulatory agreement entered into pursuant to
25 subdivision (f) of Section 50199.14 of the Health and Safety Code
26 shall apply, providing the agreement includes all of the following
27 provisions:

28 (1) A term not less than the compliance period.

29 (2) A requirement that the agreement be filed in the official
30 records of the county in which the qualified low-income housing
31 project is located.

32 (3) A provision stating which state and local agencies can
33 enforce the regulatory agreement in the event the housing sponsor
34 fails to satisfy any of the requirements of this section.

35 (4) A provision that the regulatory agreement shall be deemed
36 a contract enforceable by tenants as third-party beneficiaries thereto
37 and which allows individuals, whether prospective, present, or
38 former occupants of the building, who meet the income limitation
39 applicable to the building, the right to enforce the regulatory
40 agreement in any state court.

1 (5) A provision incorporating the requirements of Section 42
2 of the Internal Revenue Code as modified by this section.

3 (6) A requirement that the housing sponsor notify the California
4 Tax Credit Allocation Committee or its designee if there is a
5 determination by the Internal Revenue Service that the project is
6 not in compliance with Section 42(g) of the Internal Revenue Code.

7 (7) A requirement that the housing sponsor, as security for the
8 performance of the housing sponsor's obligations under the
9 regulatory agreement, assign the housing sponsor's interest in rents
10 that it receives from the project, provided that until there is a
11 default under the regulatory agreement, the housing sponsor is
12 entitled to collect and retain the rents.

13 (8) The remedies available in the event of a default under the
14 regulatory agreement that is not cured within a reasonable cure
15 period, include, but are not limited to, allowing any of the parties
16 designated to enforce the regulatory agreement to collect all rents
17 with respect to the project; taking possession of the project and
18 operating the project in accordance with the regulatory agreement
19 until the enforcer determines the housing sponsor is in a position
20 to operate the project in accordance with the regulatory agreement;
21 applying to any court for specific performance; securing the
22 appointment of a receiver to operate the project; or any other relief
23 as may be appropriate.

24 (j) (1) The committee shall allocate the housing credit on a
25 regular basis consisting of two or more periods in each calendar
26 year during which applications may be filed and considered. The
27 committee shall establish application filing deadlines, the maximum
28 percentage of federal and state low-income housing tax credit
29 ceiling that may be allocated by the committee in that period, and
30 the approximate date on which allocations shall be made. If the
31 enactment of federal or state law, the adoption of rules or
32 regulations or other similar events prevent the use of two allocation
33 periods, the committee may reduce the number of periods and
34 adjust the filing deadlines, maximum percentage of credit allocated,
35 and the allocation dates.

36 (2) The committee shall adopt a qualified allocation plan, as
37 provided in Section 42(m)(1) of the Internal Revenue Code. In
38 adopting this plan, the committee shall comply with the provisions
39 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
40 Code.

1 (3) Notwithstanding Section 42(m) of the Internal Revenue
2 Code, the California Tax Credit Allocation Committee shall
3 allocate housing credits in accordance with the qualified allocation
4 plan and regulations, which shall include the following provisions:

5 (A) All housing sponsors, as defined by paragraph (3) of
6 subdivision (a), shall demonstrate at the time the application is
7 filed with the committee that the project meets the following
8 threshold requirements:

9 (i) The housing sponsor shall demonstrate there is a need and
10 demand for low-income housing in the community or region for
11 which it is proposed.

12 (ii) The project's proposed financing, including tax credit
13 proceeds, shall be sufficient to complete the project and that the
14 proposed operating income shall be adequate to operate the project
15 for the extended use period.

16 (iii) The project shall have enforceable financing commitments,
17 either construction or permanent financing, for at least 50 percent
18 of the total estimated financing of the project.

19 (iv) The housing sponsor shall have and maintain control of the
20 site for the project.

21 (v) The housing sponsor shall demonstrate that the project
22 complies with all applicable local land use and zoning ordinances.

23 (vi) The housing sponsor shall demonstrate that the project
24 development team has the experience and the financial capacity
25 to ensure project completion and operation for the extended use
26 period.

27 (vii) The housing sponsor shall demonstrate the amount of tax
28 credit that is necessary for the financial feasibility of the project
29 and its viability as a qualified low-income housing project
30 throughout the extended use period, taking into account operating
31 expenses, a supportable debt service, reserves, funds set aside for
32 rental subsidies, and required equity, and a development fee that
33 does not exceed a specified percentage of the eligible basis of the
34 project prior to inclusion of the development fee in the eligible
35 basis, as determined by the committee.

36 (B) The committee shall give a preference to those projects
37 satisfying all of the threshold requirements of subparagraph (A)
38 if both of the following apply:

39 (i) The project serves the lowest income tenants at rents
40 affordable to those tenants.

1 (ii) The project is obligated to serve qualified tenants for the
2 longest period.

3 (C) In addition to the provisions of subparagraphs (A) and (B),
4 the committee shall use the following criteria in allocating housing
5 credits:

6 (i) Projects serving large families in which a substantial number,
7 as defined by the committee of all residential units is comprised
8 of low-income units with three and more bedrooms.

9 (ii) Projects providing single room occupancy units serving very
10 low income tenants.

11 (iii) Existing projects that are “at risk of conversion,” as defined
12 by paragraph (4) of subdivision (c).

13 (iv) Projects for which a public agency provides direct or indirect
14 long-term financial support for at least 15 percent of the total
15 project development costs or projects for which the owner’s equity
16 constitutes at least 30 percent of the total project development
17 costs.

18 (v) Projects that provide tenant amenities not generally available
19 to residents of low-income housing projects.

20 (4) For purposes of allocating credits pursuant to this section,
21 the committee shall not give preference to any project by virtue
22 of the date of submission of its application.

23 (k) Section 42(l) of the Internal Revenue Code shall be modified
24 as follows:

25 The term “secretary” shall be replaced by the term “California
26 Franchise Tax Board.”

27 (l) In the case where the credit allowed under this section
28 exceeds the net tax, the excess credit may be carried over to reduce
29 the net tax in the following year, and succeeding taxable years, if
30 necessary, until the credit has been exhausted.

31 (m) A project that received an allocation of a 1989 federal
32 housing credit dollar amount shall be eligible to receive an
33 allocation of a 1990 state housing credit dollar amount, subject to
34 all of the following conditions:

35 (1) The project was not placed in service prior to 1990.

36 (2) To the extent the amendments made to this section by the
37 Statutes of 1990 conflict with any provisions existing in this section
38 prior to those amendments, the prior provisions of law shall prevail.

1 (3) Notwithstanding paragraph (2), a project applying for an
2 allocation under this subdivision shall be subject to the
3 requirements of paragraph (3) of subdivision (j).

4 (n) The credit period with respect to an allocation of credit in
5 1989 by the California Tax Credit Allocation Committee of which
6 any amount is attributable to unallocated credit from 1987 or 1988
7 shall not begin until after December 31, 1989.

8 (o) The provisions of Section 11407(a) of Public Law 101-508,
9 relating to the effective date of the extension of the low-income
10 housing credit, shall apply to calendar years after 1989.

11 (p) The provisions of Section 11407(c) of Public Law 101-508,
12 relating to election to accelerate credit, shall not apply.

13 (q) Any unused credit may continue to be carried forward, as
14 provided in subdivision (l), until the credit has been exhausted.

15 This section shall remain in effect on and after December 1,
16 1990, for as long as Section 42 of the Internal Revenue Code,
17 relating to low-income housing credits, remains in effect.

18 (r) The amendments to this section by the act adding this
19 subdivision shall apply only to taxable years beginning on or after
20 January 1, 1994.

21 SEC. 3. Section 23610.5 of the Revenue and Taxation Code
22 is amended to read:

23 23610.5. (a) (1) There shall be allowed as a credit against the
24 “tax” (as defined by Section 23036) a state low-income housing
25 tax credit in an amount equal to the amount determined in
26 subdivision (c), computed in accordance with Section 42 of the
27 Internal Revenue Code of 1986, except as otherwise provided in
28 this section.

29 (2) “Taxpayer,” for purposes of this section, means the sole
30 owner in the case of a “C” corporation, the partners in the case of
31 a partnership, and the shareholders in the case of an “S”
32 corporation.

33 (3) “Housing sponsor,” for purposes of this section, means the
34 sole owner in the case of a “C” corporation, the partnership in the
35 case of a partnership, and the “S” corporation in the case of an “S”
36 corporation.

37 (b) (1) The amount of the credit allocated to any housing
38 sponsor shall be authorized by the California Tax Credit Allocation
39 Committee, or any successor thereof, based on a project’s need

1 for the credit for economic feasibility in accordance with the
2 requirements of this section.

3 (A) The low-income housing project shall be located in
4 California and shall meet either of the following requirements:

5 (i) Except for projects to provide farmworker housing, as defined
6 in subdivision (h) of Section 50199.7 of the Health and Safety
7 Code, that are allocated credits solely under the set-aside described
8 in subdivision (c) of Section 50199.20 of the Health and Safety
9 Code, the project's housing sponsor has been allocated by the
10 California Tax Credit Allocation Committee a credit for federal
11 income tax purposes under Section 42 of the Internal Revenue
12 Code.

13 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
14 Internal Revenue Code.

15 (B) The California Tax Credit Allocation Committee shall not
16 require fees for the credit under this section in addition to those
17 fees required for applications for the tax credit pursuant to Section
18 42 of the Internal Revenue Code. The committee may require a
19 fee if the application for the credit under this section is submitted
20 in a calendar year after the year the application is submitted for
21 the federal tax credit.

22 (C) (i) For a project that receives a preliminary reservation of
23 the state low-income housing tax credit, allowed pursuant to
24 subdivision (a), on or after January 1, 2009, and before January 1,
25 2016, the credit shall be allocated to the partners of a partnership
26 owning the project in accordance with the partnership agreement,
27 regardless of how the federal low-income housing tax credit with
28 respect to the project is allocated to the partners, or whether the
29 allocation of the credit under the terms of the agreement has
30 substantial economic effect, within the meaning of Section 704(b)
31 of the Internal Revenue Code.

32 (ii) To the extent the allocation of the credit to a partner under
33 this section lacks substantial economic effect, any loss or deduction
34 otherwise allowable under this part that is attributable to the sale
35 or other disposition of that partner's partnership interest made prior
36 to the expiration of the federal credit shall not be allowed in the
37 taxable year in which the sale or other disposition occurs, but shall
38 instead be deferred until and treated as if it occurred in the first
39 taxable year immediately following the taxable year in which the
40 federal credit period expires for the project described in clause (i).

1 (iii) This subparagraph shall not apply to a project that receives
2 a preliminary reservation of state low-income housing tax credits
3 under the set-aside described in subdivision (c) of Section 50199.20
4 of the Health and Safety Code unless the project also receives a
5 preliminary reservation of federal low-income housing tax credits.

6 (iv) This subparagraph shall cease to be operative with respect
7 to any project that receives a preliminary reservation of a credit
8 on or after January 1, 2016.

9 (2) (A) The California Tax Credit Allocation Committee shall
10 certify to the housing sponsor the amount of tax credit under this
11 section allocated to the housing sponsor for each credit period.

12 (B) In the case of a partnership or an “S” corporation, the
13 housing sponsor shall provide a copy of the California Tax Credit
14 Allocation Committee certification to the taxpayer.

15 (C) The taxpayer shall, upon request, provide a copy of the
16 certification to the Franchise Tax Board.

17 (D) All elections made by the taxpayer pursuant to Section 42
18 of the Internal Revenue Code shall apply to this section.

19 (E) ~~For~~ (i) *Except as described in clause (ii), for buildings*
20 *located in designated difficult development areas (DDAs) or*
21 *qualified census tracts (QCTs) as defined in Section ~~42(d)(5)(C)~~*
22 *42(d)(5)(B) of the Internal Revenue Code, credits may be allocated*
23 *under this section in the amounts prescribed in subdivision (c),*
24 *provided that the amount of credit allocated under Section 42 of*
25 *the Internal Revenue Code is computed on 100 percent of the*
26 *qualified basis of the building.*

27 *(ii) Notwithstanding clause (i), the California Tax Credit*
28 *Allocation Committee may allocated the credit for buildings located*
29 *in DDAs or QCTs that are restricted to having 100 percent of its*
30 *occupants be special needs households, as defined in the California*
31 *Code of Regulations by the California Tax Credit Allocation*
32 *Committee, even if the taxpayer receives federal credits pursuant*
33 *to Section 42(d)(5)(B) of the Internal Revenue Code, provided that*
34 *the credit allowed under this section shall not exceed 30 percent*
35 *of the eligible basis of the building.*

36 *(iii) (I) The California Tax Credit Allocation Committee may*
37 *allocate a credit under this section in exchange for a credit*
38 *allocated pursuant to Section 42(d)(5)(B) of the Internal Revenue*
39 *Code in amounts up to 30 percent of the eligible basis of a building*

1 *if the credits allowed Section 42 of the Internal Revenue Code are*
 2 *reduced by an equivalent amount.*

3 (II) *Equivalent amounts shall be determined by the California*
 4 *Tax Credit Allocation Committee based upon the relative amounts*
 5 *required to produce an equivalent tax credit to the taxpayer.*

6 (c) Section 42(b) of the Internal Revenue Code shall be modified
 7 as follows:

8 (1) In the case of any qualified low-income building placed in
 9 service by the housing sponsor during 1987, the term “applicable
 10 percentage” means 9 percent for each of the first three years and
 11 3 percent for the fourth year for new buildings (whether or not the
 12 building is federally subsidized) and for existing buildings.

13 (2) In the case of any qualified low-income building that receives
 14 an allocation after 1989 and is a new building not federally
 15 subsidized, the term “applicable percentage” means the following:

16 (A) For each of the first three years, the percentage prescribed
 17 by the Secretary of the Treasury for new buildings that are not
 18 federally subsidized for the taxable year, determined in accordance
 19 with the requirements of Section 42(b)(2) of the Internal Revenue
 20 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

21 (B) For the fourth year, the difference between 30 percent and
 22 the sum of the applicable percentages for the first three years.

23 (3) In the case of any qualified low-income building that receives
 24 an allocation after 1989 and that is a new building that is federally
 25 subsidized or that is an existing building that is “at risk of
 26 conversion,” the term “applicable percentage” means the following:

27 (A) For each of the first three years, the percentage prescribed
 28 by the Secretary of the Treasury for new buildings that are federally
 29 subsidized for the taxable year.

30 (B) For the fourth year, the difference between 13 percent and
 31 the sum of the applicable percentages for the first three years.

32 (4) For purposes of this section, the term “at risk of conversion,”
 33 with respect to an existing property means a property that satisfies
 34 all of the following criteria:

35 (A) The property is a multifamily rental housing development
 36 in which at least 50 percent of the units receive governmental
 37 assistance pursuant to any of the following:

38 (i) New construction, substantial rehabilitation, moderate
 39 rehabilitation, property disposition, and loan management set-aside
 40 programs, or any other program providing project-based assistance

1 pursuant to Section 8 of the United States Housing Act of 1937,
2 Section 1437f of Title 42 of the United States Code, as amended.

3 (ii) The Below-Market-Interest-Rate Program pursuant to
4 Section 221(d)(3) of the National Housing Act, Sections
5 1715l(d)(3) and (5) of Title 12 of the United States Code.

6 (iii) Section 236 of the National Housing Act, Section 1715z-1
7 of Title 12 of the United States Code.

8 (iv) Programs for rent supplement assistance pursuant to Section
9 101 of the Housing and Urban Development Act of 1965, Section
10 1701s of Title 12 of the United States Code, as amended.

11 (v) Programs pursuant to Section 515 of the Housing Act of
12 1949, Section 1485 of Title 42 of the United States Code, as
13 amended.

14 (vi) The low-income housing credit program set forth in Section
15 42 of the Internal Revenue Code.

16 (B) The restrictions on rent and income levels will terminate or
17 the federally insured mortgage on the property is eligible for
18 prepayment any time within five years before or after the date of
19 application to the California Tax Credit Allocation Committee.

20 (C) The entity acquiring the property enters into a regulatory
21 agreement that requires the property to be operated in accordance
22 with the requirements of this section for a period equal to the
23 greater of 55 years or the life of the property.

24 (D) The property satisfies the requirements of Section 42(e) of
25 the Internal Revenue Code regarding rehabilitation expenditures,
26 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
27 apply.

28 (d) The term “qualified low-income housing project” as defined
29 in Section 42(c)(2) of the Internal Revenue Code is modified by
30 adding the following requirements:

31 (1) The taxpayer shall be entitled to receive a cash distribution
32 from the operations of the project, after funding required reserves,
33 which, at the election of the taxpayer, shall be equal to:

34 (A) An amount not to exceed 8 percent of the lesser of:

35 (i) The owner equity, which shall include the amount of the
36 capital contributions actually paid to the housing sponsor and shall
37 not include any amounts until they are paid on an investor note.

38 (ii) Twenty percent of the adjusted basis of the building as of
39 the close of the first taxable year of the credit period.

1 (B) The amount of the cashflow from those units in the building
2 that are not low-income units. For purposes of computing cashflow
3 under this subparagraph, operating costs shall be allocated to the
4 low-income units using the “floor space fraction,” as defined in
5 Section 42 of the Internal Revenue Code.

6 (C) Any amount allowed to be distributed under subparagraph
7 (A) that is not available for distribution during the first five years
8 of the compliance period may accumulate and be distributed at
9 any time during the first 15 years of the compliance period but not
10 thereafter.

11 (2) The limitation on return shall apply in the aggregate to the
12 partners if the housing sponsor is a partnership and in the aggregate
13 to the shareholders if the housing sponsor is an “S” corporation.

14 (3) The housing sponsor shall apply any cash available for
15 distribution in excess of the amount eligible to be distributed under
16 paragraph (1) to reduce the rent on rent-restricted units or to
17 increase the number of rent-restricted units subject to the tests of
18 Section 42(g)(1) of the Internal Revenue Code.

19 (e) The provisions of Section 42(f) of the Internal Revenue Code
20 shall be modified as follows:

21 (1) The term “credit period” as defined in Section 42(f)(1) of
22 the Internal Revenue Code is modified by substituting “four taxable
23 years” for “10 taxable years.”

24 (2) The special rule for the first taxable year of the credit period
25 under Section 42(f)(2) of the Internal Revenue Code shall not apply
26 to the tax credit under this section.

27 (3) Section 42(f)(3) of the Internal Revenue Code is modified
28 to read:

29 If, as of the close of any taxable year in the compliance period,
30 after the first year of the credit period, the qualified basis of any
31 building exceeds the qualified basis of that building as of the close
32 of the first year of the credit period, the housing sponsor, to the
33 extent of its tax credit allocation, shall be eligible for a credit on
34 the excess in an amount equal to the applicable percentage
35 determined pursuant to subdivision (c) for the four-year period
36 beginning with the later of the taxable years in which the increase
37 in qualified basis occurs.

38 (f) The provisions of Section 42(h) of the Internal Revenue
39 Code shall be modified as follows:

1 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
2 applicable and instead the following provisions shall be applicable:

3 The total amount for the four-year credit period of the housing
4 credit dollars allocated in a calendar year to any building shall
5 reduce the aggregate housing credit dollar amount of the California
6 Tax Credit Allocation Committee for the calendar year in which
7 the allocation is made.

8 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
9 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
10 not be applicable.

11 (g) The aggregate housing credit dollar amount that may be
12 allocated annually by the California Tax Credit Allocation
13 Committee pursuant to this section, Section 12206, and Section
14 17058 shall be an amount equal to the sum of all the following:

15 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
16 year, and, for the 2002 calendar year and each calendar year
17 thereafter, seventy million dollars (\$70,000,000) increased by the
18 percentage, if any, by which the Consumer Price Index for the
19 preceding calendar year exceeds the Consumer Price Index for the
20 2001 calendar year. For the purposes of this paragraph, the term
21 “Consumer Price Index” means the last Consumer Price Index for
22 all urban consumers published by the federal Department of Labor.

23 (2) The unused housing credit ceiling, if any, for the preceding
24 calendar years.

25 (3) The amount of housing credit ceiling returned in the calendar
26 year. For purposes of this paragraph, the amount of housing credit
27 dollar amount returned in the calendar year equals the housing
28 credit dollar amount previously allocated to any project that does
29 not become a qualified low-income housing project within the
30 period required by this section or to any project with respect to
31 which an allocation is canceled by mutual consent of the California
32 Tax Credit Allocation Committee and the allocation recipient.

33 (4) Five hundred thousand dollars (\$500,000) per calendar year
34 for projects to provide farmworker housing, as defined in
35 subdivision (h) of Section 50199.7 of the Health and Safety Code.

36 (5) The amount of any unallocated or returned credits under
37 former Sections 17053.14, 23608.2, and 23608.3, as those sections
38 read prior to January 1, 2009, until fully exhausted for projects to
39 provide farmworker housing, as defined in subdivision (h) of
40 Section 50199.7 of the Health and Safety Code.

1 (h) The term “compliance period” as defined in Section 42(i)(1)
2 of the Internal Revenue Code is modified to mean, with respect to
3 any building, the period of 30 consecutive taxable years beginning
4 with the first taxable year of the credit period with respect thereto.

5 (i) Section 42(j) of the Internal Revenue Code shall not be
6 applicable and the following shall be substituted in its place:

7 The requirements of this section shall be set forth in a regulatory
8 agreement between the California Tax Credit Allocation Committee
9 and the housing sponsor, and this agreement shall be subordinated,
10 when required, to any lien or encumbrance of any banks or other
11 institutional lenders to the project. The regulatory agreement
12 entered into pursuant to subdivision (f) of Section 50199.14 of the
13 Health and Safety Code shall apply, provided that the agreement
14 includes all of the following provisions:

15 (1) A term not less than the compliance period.

16 (2) A requirement that the agreement be filed in the official
17 records of the county in which the qualified low-income housing
18 project is located.

19 (3) A provision stating which state and local agencies can
20 enforce the regulatory agreement in the event the housing sponsor
21 fails to satisfy any of the requirements of this section.

22 (4) A provision that the regulatory agreement shall be deemed
23 a contract enforceable by tenants as third-party beneficiaries
24 thereto, and that allows individuals, whether prospective, present,
25 or former occupants of the building, who meet the income
26 limitation applicable to the building the right to enforce the
27 regulatory agreement in any state court.

28 (5) A provision incorporating the requirements of Section 42
29 of the Internal Revenue Code as modified by this section.

30 (6) A requirement that the housing sponsor notify the California
31 Tax Credit Allocation Committee or its designee if there is a
32 determination by the Internal Revenue Service that the project is
33 not in compliance with Section 42(g) of the Internal Revenue Code.

34 (7) A requirement that the housing sponsor, as security for the
35 performance of the housing sponsor’s obligations under the
36 regulatory agreement, assign the housing sponsor’s interest in rents
37 that it receives from the project, provided that until there is a
38 default under the regulatory agreement, the housing sponsor is
39 entitled to collect and retain the rents.

1 (8) A provision that the remedies available in the event of a
2 default under the regulatory agreement that is not cured within a
3 reasonable cure period include, but are not limited to, allowing
4 any of the parties designated to enforce the regulatory agreement
5 to collect all rents with respect to the project; taking possession of
6 the project and operating the project in accordance with the
7 regulatory agreement until the enforcer determines the housing
8 sponsor is in a position to operate the project in accordance with
9 the regulatory agreement; applying to any court for specific
10 performance; securing the appointment of a receiver to operate
11 the project; or any other relief as may be appropriate.

12 (j) (1) The committee shall allocate the housing credit on a
13 regular basis consisting of two or more periods in each calendar
14 year during which applications may be filed and considered. The
15 committee shall establish application filing deadlines, the maximum
16 percentage of federal and state low-income housing tax credit
17 ceiling that may be allocated by the committee in that period, and
18 the approximate date on which allocations shall be made. If the
19 enactment of federal or state law, the adoption of rules or
20 regulations, or other similar events prevent the use of two allocation
21 periods, the committee may reduce the number of periods and
22 adjust the filing deadlines, maximum percentage of credit allocated,
23 and allocation dates.

24 (2) The committee shall adopt a qualified allocation plan, as
25 provided in Section 42(m)(1) of the Internal Revenue Code. In
26 adopting this plan, the committee shall comply with the provisions
27 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
28 Code.

29 (3) Notwithstanding Section 42(m) of the Internal Revenue
30 Code, the California Tax Credit Allocation Committee shall
31 allocate housing credits in accordance with the qualified allocation
32 plan and regulations, which shall include the following provisions:

33 (A) All housing sponsors, as defined by paragraph (3) of
34 subdivision (a), shall demonstrate at the time the application is
35 filed with the committee that the project meets the following
36 threshold requirements:

37 (i) The housing sponsor shall demonstrate that there is a need
38 for low-income housing in the community or region for which it
39 is proposed.

1 (ii) The project’s proposed financing, including tax credit
2 proceeds, shall be sufficient to complete the project and shall be
3 adequate to operate the project for the extended use period.

4 (iii) The project shall have enforceable financing commitments,
5 either construction or permanent financing, for at least 50 percent
6 of the total estimated financing of the project.

7 (iv) The housing sponsor shall have and maintain control of the
8 site for the project.

9 (v) The housing sponsor shall demonstrate that the project
10 complies with all applicable local land use and zoning ordinances.

11 (vi) The housing sponsor shall demonstrate that the project
12 development team has the experience and the financial capacity
13 to ensure project completion and operation for the extended use
14 period.

15 (vii) The housing sponsor shall demonstrate the amount of tax
16 credit that is necessary for the financial feasibility of the project
17 and its viability as a qualified low-income housing project
18 throughout the extended use period, taking into account operating
19 expenses, a supportable debt service, reserves, funds set aside for
20 rental subsidies, and required equity, and a development fee that
21 does not exceed a specified percentage of the eligible basis of the
22 project prior to inclusion of the development fee in the eligible
23 basis, as determined by the committee.

24 (B) The committee shall give a preference to those projects
25 satisfying all of the threshold requirements of subparagraph (A)
26 if both of the following apply:

27 (i) The project serves the lowest income tenants at rents
28 affordable to those tenants.

29 (ii) The project is obligated to serve qualified tenants for the
30 longest period.

31 (C) In addition to the provisions of subparagraphs (A) and (B),
32 the committee shall use the following criteria in allocating housing
33 credits:

34 (i) Projects serving large families in which a substantial number,
35 as defined by the committee, of all residential units are low-income
36 units with three and more bedrooms.

37 (ii) Projects providing single-room occupancy units serving
38 very low income tenants.

39 (iii) Existing projects that are “at risk of conversion,” as defined
40 by paragraph (4) of subdivision (c).

1 (iv) Projects for which a public agency provides direct or indirect
2 long-term financial support for at least 15 percent of the total
3 project development costs or projects for which the owner's equity
4 constitutes at least 30 percent of the total project development
5 costs.

6 (v) Projects that provide tenant amenities not generally available
7 to residents of low-income housing projects.

8 (4) For purposes of allocating credits pursuant to this section,
9 the committee shall not give preference to any project by virtue
10 of the date of submission of its application except to break a tie
11 when two or more of the projects have an equal rating.

12 (5) Not less than 20 percent of the low-income housing tax
13 credits available annually under this section, Section 12206, and
14 Section 17058 shall be set aside for allocation to rural areas as
15 defined in Section 50199.21 of the Health and Safety Code. Any
16 amount of credit set aside for rural areas remaining on or after
17 October 31 of any calendar year shall be available for allocation
18 to any eligible project. No amount of credit set aside for rural areas
19 shall be considered available for any eligible project so long as
20 there are eligible rural applications pending on October 31.

21 (k) Section 42(l) of the Internal Revenue Code shall be modified
22 as follows:

23 The term "secretary" shall be replaced by the term "California
24 Franchise Tax Board."

25 (l) In the case where the state credit allowed under this section
26 exceeds the "tax," the excess may be carried over to reduce the
27 "tax" in the following year, and succeeding years if necessary,
28 until the credit has been exhausted.

29 (m) A project that received an allocation of a 1989 federal
30 housing credit dollar amount shall be eligible to receive an
31 allocation of a 1990 state housing credit dollar amount, subject to
32 all of the following conditions:

33 (1) The project was not placed in service prior to 1990.

34 (2) To the extent the amendments made to this section by the
35 Statutes of 1990 conflict with any provisions existing in this section
36 prior to those amendments, the prior provisions of law shall prevail.

37 (3) Notwithstanding paragraph (2), a project applying for an
38 allocation under this subdivision shall be subject to the
39 requirements of paragraph (3) of subdivision (j).

1 (n) The credit period with respect to an allocation of credit in
2 1989 by the California Tax Credit Allocation Committee of which
3 any amount is attributable to unallocated credit from 1987 or 1988
4 shall not begin until after December 31, 1989.

5 (o) The provisions of Section 11407(a) of Public Law 101-508,
6 relating to the effective date of the extension of the low-income
7 housing credit, shall apply to calendar years after 1989.

8 (p) The provisions of Section 11407(c) of Public Law 101-508,
9 relating to election to accelerate credit, shall not apply.

10 (q) (1) A corporation may elect to assign any portion of any
11 credit allowed under this section to one or more affiliated
12 corporations for each taxable year in which the credit is allowed.
13 For purposes of this subdivision, “affiliated corporation” has the
14 meaning provided in subdivision (b) of Section 25110, as that
15 section was amended by Chapter 881 of the Statutes of 1993, as
16 of the last day of the taxable year in which the credit is allowed,
17 except that “100 percent” is substituted for “more than 50 percent”
18 wherever it appears in the section, as that section was amended by
19 Chapter 881 of the Statutes of 1993, and “voting common stock”
20 is substituted for “voting stock” wherever it appears in the section,
21 as that section was amended by Chapter 881 of the Statutes of
22 1993.

23 (2) The election provided in paragraph (1):

24 (A) May be based on any method selected by the corporation
25 that originally receives the credit.

26 (B) Shall be irrevocable for the taxable year the credit is allowed,
27 once made.

28 (C) May be changed for any subsequent taxable year if the
29 election to make the assignment is expressly shown on each of the
30 returns of the affiliated corporations that assign and receive the
31 credits.

32 (r) Any unused credit may continue to be carried forward, as
33 provided in subdivision (l), until the credit has been exhausted.

34 This section shall remain in effect on or after December 1, 1990,
35 for as long as Section 42 of the Internal Revenue Code, relating
36 to low-income housing credits, remains in effect.

37 (s) The amendments to this section made by the act adding this
38 subdivision shall apply only to taxable years beginning on or after
39 January 1, 1994, except that paragraph (1) of subdivision (q), as

1 amended, shall apply to taxable years beginning on or after January
2 1, 1993.
3 SEC. 4. This act provides for a tax levy within the meaning of
4 Article IV of the Constitution and shall go into immediate effect.

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