

AMENDED IN ASSEMBLY MARCH 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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 *the* 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%~~ 50% 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~~ *described* by Section 12201) a state low-income
- 5 housing tax credit in an amount equal to the amount determined
- 6 in 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) (i) Except as described in clause (ii), for buildings located
19 in designated difficult development areas (DDAs) or qualified
20 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
21 Internal Revenue Code, credits may be allocated under this section
22 in the amounts prescribed in subdivision (c), provided that the
23 amount of credit allocated under Section 42 of the Internal Revenue
24 Code is computed on 100 percent of the qualified basis of the
25 building.

26 (ii) Notwithstanding clause (i), the California Tax Credit
27 Allocation Committee may ~~allocate~~ *allocate* the credit for
28 buildings located in DDAs or QCTs that are restricted to having
29 ~~100~~ 50 percent of its occupants be special needs households, as
30 defined in the California Code of Regulations by the California
31 Tax Credit Allocation Committee, even if the taxpayer receives
32 federal credits pursuant to Section 42(d)(5)(B) of the Internal
33 Revenue Code, provided that the credit allowed under this section
34 shall not exceed 30 percent of the eligible basis of the building.

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

1 (II) ~~Equivalent amounts~~—*An equivalent amount* shall be
2 determined by the California Tax Credit Allocation Committee
3 based upon the relative ~~amounts~~—*amount* required to produce an
4 equivalent *state* tax credit to the taxpayer.

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

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

10 (A) For each of the first three years, the percentage prescribed
11 by the Secretary of the Treasury for new buildings that are not
12 federally subsidized for the taxable year, determined in accordance
13 with the requirements of Section 42(b)(2) of the Internal Revenue
14 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
15 of the Internal Revenue Code.

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

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

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

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

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

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

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

38 (ii) The Below-Market-Interest-Rate Program pursuant to
39 Section 221(d)(3) of the National Housing Act, Sections
40 1715l(d)(3) and (5) of Title 12 of the United States Code.

- 1 (iii) Section 236 of the National Housing Act, Section 1715z-1
2 of Title 12 of the United States Code.
- 3 (iv) Programs for rent supplement assistance pursuant to Section
4 101 of the Housing and Urban Development Act of 1965, Section
5 1701s of Title 12 of the United States Code, as amended.
- 6 (v) Programs pursuant to Section 515 of the Housing Act of
7 1949, Section 1485 of Title 42 of the United States Code, as
8 amended.
- 9 (vi) The low-income housing credit program set forth in Section
10 42 of the Internal Revenue Code.
- 11 (B) The restrictions on rent and income levels will terminate or
12 the federal insured mortgage on the property is eligible for
13 prepayment any time within five years before or after the date of
14 application to the California Tax Credit Allocation Committee.
- 15 (C) The entity acquiring the property enters into a regulatory
16 agreement that requires the property to be operated in accordance
17 with the requirements of this section for a period equal to the
18 greater of 55 years or the life of the property.
- 19 (D) The property satisfies the requirements of Section 42(e) of
20 the Internal Revenue Code regarding rehabilitation expenditures,
21 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
22 apply.
- 23 (d) The term “qualified low-income housing project” as defined
24 in Section 42(c)(2) of the Internal Revenue Code is modified by
25 adding the following requirements:
- 26 (1) The taxpayer shall be entitled to receive a cash distribution
27 from the operations of the project, after funding required reserves,
28 which, at the election of the taxpayer, is equal to:
- 29 (A) An amount not to exceed 8 percent of the lesser of:
- 30 (i) The owner equity which shall include the amount of the
31 capital contributions actually paid to the housing sponsor and shall
32 not include any amounts until they are paid on an investor note.
- 33 (ii) Twenty percent of the adjusted basis of the building as of
34 the close of the first taxable year of the credit period.
- 35 (B) The amount of the cashflow from those units in the building
36 that are not low-income units. For purposes of computing cashflow
37 under this subparagraph, operating costs shall be allocated to the
38 low-income units using the “floor space fraction,” as defined in
39 Section 42 of the Internal Revenue Code.

1 (C) Any amount allowed to be distributed under subparagraph
2 (A) that is not available for distribution during the first five years
3 of the compliance period may accumulate and be distributed any
4 time during the first 15 years of the compliance period but not
5 thereafter.

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

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

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

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

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

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

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

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

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

37 The total amount for the four-year credit period of the housing
38 credit dollars allocated in a calendar year to any building shall
39 reduce the aggregate housing credit dollar amount of the California

1 Tax Credit Allocation Committee for the calendar year in which
2 the allocation is made.

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

6 (g) The aggregate housing credit dollar amount that may be
7 allocated annually by the California Tax Credit Allocation
8 Committee pursuant to this section, Section 17058, and Section
9 23610.5 shall be an amount equal to the sum of all the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (H) The remedies available in the event of a default under the
39 regulatory agreement that is not cured within a reasonable cure
40 period, include, but are not limited to, allowing any of the parties

1 designated to enforce the regulatory agreement to collect all rents
2 with respect to the project; taking possession of the project and
3 operating the project in accordance with the regulatory agreement
4 until the enforcer determines the housing sponsor is in a position
5 to operate the project in accordance with the regulatory agreement;
6 applying to any court for specific performance; securing the
7 appointment of a receiver to operate the project; or any other relief
8 as may be appropriate.

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

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

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

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

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

37 (ii) The project's proposed financing, including tax credit
38 proceeds, shall be sufficient to complete the project and that the
39 proposed operating income shall be adequate to operate the project
40 for the extended use period.

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

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

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

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

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

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

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

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

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

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

34 (ii) Projects providing single room occupancy units serving very
35 low income tenants.

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

38 (iv) Projects for which a public agency provides direct or indirect
39 long-term financial support for at least 15 percent of the total
40 project development costs or projects for which the owner’s equity

1 constitutes at least 30 percent of the total project development
2 costs.

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

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

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

11 The term “secretary” shall be replaced by the term “California
12 Franchise Tax Board.”

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

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

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

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

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

27 17058. (a) (1) There shall be allowed as a credit against the
28 ~~amount of net tax~~ “net tax” (as defined in Section 17039) a state
29 low-income housing credit in an amount equal to the amount
30 determined in subdivision (c), computed in accordance with the
31 provisions of Section 42 of the Internal Revenue Code, except as
32 otherwise provided in this section.

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

36 (3) “Housing sponsor” for purposes of this section means the
37 sole owner in the case of an individual, the partnership in the case
38 of a partnership, and the “S” corporation in the case of an “S”
39 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) The low-income housing project shall be located in
7 California and shall meet either of the following requirements:

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

16 (ii) It ~~shall qualify~~ *qualifies* for a credit under Section
17 42(h)(4)(B) of the 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) To the extent the allocation of the credit to a partner under
36 this section lacks substantial economic effect, any loss or deduction
37 otherwise allowable under this part that is attributable to the sale
38 or other disposition of that partner's partnership interest made prior
39 to the expiration of the federal credit shall not be allowed in the
40 taxable year in which the sale or other disposition occurs, but shall

1 instead be deferred until and treated as if it occurred in the first
 2 taxable year immediately following the taxable year in which the
 3 federal credit period expires for the project described in clause (i).

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

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

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

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

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

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

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

30 (ii) Notwithstanding clause (i), the California Tax Credit
 31 Allocation Committee may ~~allocate~~ *allocate* the credit for
 32 buildings located in DDAs or QCTs that are restricted to having
 33 ~~400~~ 50 percent of its occupants be special needs households, as
 34 defined in the California Code of Regulations by the California
 35 Tax Credit Allocation Committee, even if the taxpayer receives
 36 federal credits pursuant to Section 42(d)(5)(B) of the Internal
 37 Revenue Code, provided that the credit allowed under this section
 38 shall not exceed 30 percent of the eligible basis of the building.

39 (iii) (I) The California Tax Credit Allocation Committee may
 40 allocate a credit under this section in exchange for a credit allocated

1 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
2 amounts up to 30 percent of the eligible basis of a building if the
3 credits allowed *under* Section 42 of the Internal Revenue Code
4 are reduced by an equivalent amount.

5 ~~(II) Equivalent amounts—~~*An equivalent amount* shall be
6 determined by the California Tax Credit Allocation Committee
7 based upon the relative ~~amounts—~~*amount* required to produce an
8 equivalent *state* tax credit to the taxpayer.

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

11 (1) In the case of any qualified low-income building placed in
12 service by the housing sponsor during 1987, the term “applicable
13 percentage” means 9 percent for each of the first three years and
14 3 percent for the fourth year for new buildings (whether or not the
15 building is federally subsidized) and for existing buildings.

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

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

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

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

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

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

36 (4) For purposes of this section, the term “at risk of conversion,”
37 with respect to an existing property means a property that satisfies
38 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 that, 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 that shall include the amount of the capital
2 contributions actually paid to the housing sponsor and shall not
3 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 be accumulated and 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 taxable year in which the increase in qualified
2 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 period of the housing credit
8 dollars allocated in a calendar year to any building shall reduce
9 the aggregate housing credit dollar amount of the California Tax
10 Credit Allocation Committee for the calendar year in which the
11 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 to this section.

15 (g) The aggregate housing credit dollar amount ~~which~~ *that* may
16 be allocated annually by the California Tax Credit Allocation
17 Committee pursuant to this section, Section 12206, 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) Section 42(j) of the Internal Revenue Code shall not be
11 applicable and the following requirements of this section shall be
12 set forth in a regulatory agreement between the California Tax
13 Credit Allocation Committee and the housing sponsor, which
14 agreement shall be subordinated, when required, to any lien or
15 encumbrance of any banks or other institutional lenders to the
16 project. The regulatory agreement entered into pursuant to
17 subdivision (f) of Section 50199.14 of the Health and Safety Code
18 shall apply, ~~providing~~ *provided that* the agreement includes all of
19 the following provisions:

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

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

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

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

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

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

39 (7) A requirement that the housing sponsor, as security for the
40 performance of the housing sponsor’s obligations under the

1 regulatory agreement, assign the housing sponsor's interest in rents
2 that it receives from the project, provided that until there is a
3 default under the regulatory agreement, the housing sponsor is
4 entitled to collect and retain the rents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) Projects providing single room occupancy units serving very
2 low income tenants.

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

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

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

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

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

17 The term “secretary” shall be replaced by the term “California
18 Franchise Tax Board.”

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

23 (m) A project that received an allocation of a 1989 federal
24 housing credit dollar amount shall be eligible to receive an
25 allocation of a 1990 state housing credit dollar amount, subject to
26 all of the following conditions:

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

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

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

34 (n) The credit period with respect to an allocation of credit in
35 1989 by the California Tax Credit Allocation Committee of which
36 any amount is attributable to unallocated credit from 1987 or 1988
37 shall not begin until after December 31, 1989.

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

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

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

5 This section shall remain in effect on and after December 1,
6 1990, for as long as Section 42 of the Internal Revenue Code,
7 relating to low-income housing credits, remains in effect.

8 (r) The amendments to this section *made* by the act adding this
9 subdivision shall apply only to taxable years beginning on or after
10 January 1, 1994.

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

13 23610.5. (a) (1) There shall be allowed as a credit against the
14 “tax” (as defined by Section 23036) a state low-income housing
15 tax credit in an amount equal to the amount determined in
16 subdivision (c), computed in accordance with Section 42 of the
17 Internal Revenue Code of 1986, except as otherwise provided in
18 this section.

19 (2) “Taxpayer,” for purposes of this section, means the sole
20 owner in the case of a “C” corporation, the partners in the case of
21 a partnership, and the shareholders in the case of an “S”
22 corporation.

23 (3) “Housing sponsor,” for purposes of this section, means the
24 sole owner in the case of a “C” corporation, the partnership in the
25 case of a partnership, and the “S” corporation in the case of an “S”
26 corporation.

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

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

34 (i) Except for projects to provide farmworker housing, as defined
35 in subdivision (h) of Section 50199.7 of the Health and Safety
36 Code, that are allocated credits solely under the set-aside described
37 in subdivision (c) of Section 50199.20 of the Health and Safety
38 Code, the project’s housing sponsor has been allocated by the
39 California Tax Credit Allocation Committee a credit for federal

1 income tax purposes under Section 42 of the Internal Revenue
2 Code.

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

5 (B) The California Tax Credit Allocation Committee shall not
6 require fees for the credit under this section in addition to those
7 fees required for applications for the tax credit pursuant to Section
8 42 of the Internal Revenue Code. The committee may require a
9 fee if the application for the credit under this section is submitted
10 in a calendar year after the year the application is submitted for
11 the federal tax credit.

12 (C) (i) For a project that receives a preliminary reservation of
13 the state low-income housing tax credit, allowed pursuant to
14 subdivision (a), on or after January 1, 2009, and before January 1,
15 2016, the credit shall be allocated to the partners of a partnership
16 owning the project in accordance with the partnership agreement,
17 regardless of how the federal low-income housing tax credit with
18 respect to the project is allocated to the partners, or whether the
19 allocation of the credit under the terms of the agreement has
20 substantial economic effect, within the meaning of Section 704(b)
21 of the Internal Revenue Code.

22 (ii) To the extent the allocation of the credit to a partner under
23 this section lacks substantial economic effect, any loss or deduction
24 otherwise allowable under this part that is attributable to the sale
25 or other disposition of that partner's partnership interest made prior
26 to the expiration of the federal credit shall not be allowed in the
27 taxable year in which the sale or other disposition occurs, but shall
28 instead be deferred until and treated as if it occurred in the first
29 taxable year immediately following the taxable year in which the
30 federal credit period expires for the project described in clause (i).

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

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

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

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

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

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

11 (E) (i) Except as described in clause (ii), for buildings located
12 in designated difficult development areas (DDAs) or qualified
13 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
14 Internal Revenue Code, credits may be allocated under this section
15 in the amounts prescribed in subdivision (c), provided that the
16 amount of credit allocated under Section 42 of the Internal Revenue
17 Code is computed on 100 percent of the qualified basis of the
18 building.

19 (ii) Notwithstanding clause (i), the California Tax Credit
20 Allocation Committee may ~~allocate~~ *allocate* the credit for
21 buildings located in DDAs or QCTs that are restricted to having
22 ~~400~~ 50 percent of its occupants be special needs households, as
23 defined in the California Code of Regulations by the California
24 Tax Credit Allocation Committee, even if the taxpayer receives
25 federal credits pursuant to Section 42(d)(5)(B) of the Internal
26 Revenue Code, provided that the credit allowed under this section
27 shall not exceed 30 percent of the eligible basis of the building.

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

34 (II) ~~Equivalent amounts~~ *An equivalent amount* shall be
35 determined by the California Tax Credit Allocation Committee
36 based upon the relative ~~amounts~~ *amount* required to produce an
37 equivalent *state* tax credit to the taxpayer.

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

1 (1) In the case of any qualified low-income building placed in
2 service by the housing sponsor during 1987, the term “applicable
3 percentage” means 9 percent for each of the first three years and
4 3 percent for the fourth year for new buildings (whether or not the
5 building is federally subsidized) and for existing buildings.

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

9 (A) For each of the first three years, the percentage prescribed
10 by the Secretary of the Treasury for new buildings that are not
11 federally subsidized for the taxable year, determined in accordance
12 with the requirements of Section 42(b)(2) of the Internal Revenue
13 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
14 *of the Internal Revenue Code*.

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

17 (3) In the case of any qualified low-income building that receives
18 an allocation after 1989 and that is a new building that is federally
19 subsidized or that is an existing building that is “at risk of
20 conversion,” 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 federally
23 subsidized for the taxable year.

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

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

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

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

37 (ii) The Below-Market-Interest-Rate Program pursuant to
38 Section 221(d)(3) of the National Housing Act, Sections
39 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

3 (iv) Programs for rent supplement assistance pursuant to Section
4 101 of the Housing and Urban Development Act of 1965, Section
5 1701s of Title 12 of the United States Code, as amended.

6 (v) Programs pursuant to Section 515 of the Housing Act of
7 1949, Section 1485 of Title 42 of the United States Code, as
8 amended.

9 (vi) The low-income housing credit program set forth in Section
10 42 of the Internal Revenue Code.

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

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

19 (D) The property satisfies the requirements of Section 42(e) of
20 the Internal Revenue Code regarding rehabilitation expenditures,
21 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
22 apply.

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

26 (1) The taxpayer shall be entitled to receive a cash distribution
27 from the operations of the project, after funding required reserves,
28 ~~which, that~~ at the election of the taxpayer, ~~shall be~~ *is* equal to:

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

30 (i) The owner equity, ~~which that~~ shall include the amount of
31 the capital contributions actually paid to the housing sponsor and
32 shall not include any amounts until they are paid on an investor
33 note.

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

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

1 (C) Any amount allowed to be distributed under subparagraph
 2 (A) that is not available for distribution during the first five years
 3 of the compliance period may ~~accumulate~~ *be accumulated* and be
 4 distributed at any time during the first 15 years of the compliance
 5 period but not thereafter.

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

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

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

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

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

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

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

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

35 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
 36 applicable and instead the following provisions shall be applicable:
 37 The total amount for the four-year credit period of the housing
 38 credit dollars allocated in a calendar year to any building shall
 39 reduce the aggregate housing credit dollar amount of the California

1 Tax Credit Allocation Committee for the calendar year in which
2 the allocation is made.

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

6 (g) The aggregate housing credit dollar amount that may be
7 allocated annually by the California Tax Credit Allocation
8 Committee pursuant to this section, Section 12206, and Section
9 17058 shall be an amount equal to the sum of all the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (8) A provision that the remedies available in the event of a
37 default under the regulatory agreement that is not cured within a
38 reasonable cure period include, but are not limited to, allowing
39 any of the parties designated to enforce the regulatory agreement
40 to collect all rents with respect to the project; taking possession of

1 the project and operating the project in accordance with the
2 regulatory agreement until the enforcer determines the housing
3 sponsor is in a position to operate the project in accordance with
4 the regulatory agreement; applying to any court for specific
5 performance; securing the appointment of a receiver to operate
6 the project; or any other relief as may be appropriate.

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

19 (2) The committee shall adopt a qualified allocation plan, as
20 provided in Section 42(m)(1) of the Internal Revenue Code. In
21 adopting this plan, the committee shall comply with the provisions
22 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
23 Code.

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

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

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

35 (ii) The project's proposed financing, including tax credit
36 proceeds, shall be sufficient to complete the project and shall be
37 adequate to operate the project for the extended use period.

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

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

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

5 (vi) The housing sponsor shall demonstrate that the project
6 development team has the experience and the financial capacity
7 to ensure project completion and operation for the extended use
8 period.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 The term “secretary” shall be replaced by the term “California
19 Franchise Tax Board.”

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

24 (m) A project that received an allocation of a 1989 federal
25 housing credit dollar amount shall be eligible to receive an
26 allocation of a 1990 state housing credit dollar amount, subject to
27 all of the following conditions:

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

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

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

35 (n) The credit period with respect to an allocation of credit in
36 1989 by the California Tax Credit Allocation Committee of which
37 any amount is attributable to unallocated credit from 1987 or 1988
38 shall not begin until after December 31, 1989.

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

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

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

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

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

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

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

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

30 This section shall remain in effect on ~~or~~ *and* after December 1,
31 1990, for as long as Section 42 of the Internal Revenue Code,
32 relating to low-income housing credits, remains in effect.

33 (s) The amendments to this section made by the act adding this
34 subdivision shall apply only to taxable years beginning on or after
35 January 1, 1994, except that paragraph (1) of subdivision (q), as
36 amended, shall apply to taxable years beginning on or after January
37 1, 1993.

1 SEC. 4. This act provides for a tax levy within the meaning of
2 Article IV of the Constitution and shall go into immediate effect.

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