

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2140

**Introduced by Assembly Members Roger Hernández, Alejo, and
Eduardo García García, and Thurmond**

February 17, 2016

An act to amend Section 50199.7 of the Health and Safety Code, and 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 2140, as amended, Roger Hernández. Income taxes: insurance tax: credits: low-income housing: farmworker housing assistance.

Existing law establishes a low-income housing tax credit program pursuant to which the California Tax Credit Allocation Committee provides procedures and requirements for the allocation of state insurance, personal income, and corporation tax credit amounts among qualified low-income housing projects in modified conformity to federal law that have been allocated, or qualify for, a federal low-income housing tax credit, and for farmworker housing. Existing law authorizes the California Tax Credit Allocation Committee to allocate the credit for buildings located in designated difficult development areas or qualified census tracts that are restricted to having 50% of its occupants be special needs households even if the taxpayer receives specified federal credits provided the credit does not exceed 30% of the eligible basis of the building. Existing law limits the total annual amount of the state low-income housing credit for which a federal low-income housing credit is required to the sum of \$70,000,000, as increased by any percentage increase in the Consumer Price Index for the preceding

calendar year, any unused credit for the preceding calendar years, and the amount of housing credit ceiling returned in the calendar year. Existing law additionally allows a state credit, which is not dependent on receiving a federal low-income housing credit, of \$500,000 per calendar year for projects to provide farmworker housing. Existing law defines “farmworker housing” to mean housing for agricultural workers that is available to, and occupied by, only farmworkers and their households.

This bill, under the insurance taxation law, the Personal Income Tax Law, and the Corporation Tax Law, would modify the definition of applicable percentage relating to qualified low-income buildings that are farmworker housing projects, as provided. The bill would authorize the California Tax Credit Allocation Committee to allocate the farmworker housing credit even if the taxpayer receives federal credits for buildings located in designated difficult development areas or qualified census tracts. The bill would also redefine farmworker housing to mean housing ~~for agricultural workers that is in which at least 50% of the units are~~ available to, and occupied by, ~~not less than 50% of~~ farmworkers and their households.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. 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 50199.7 of the Health and Safety Code
- 2 is amended to read:
- 3 50199.7. As used in this chapter:
- 4 (a) “Committee” means the Mortgage Bond and Tax Credit
- 5 Allocation Committee, which is renamed the California Tax Credit
- 6 Allocation Committee. All references to “committee” shall mean
- 7 the California Tax Credit Allocation Committee.
- 8 (b) “Household” has the same meaning as defined in Section
- 9 7602 of Title 25 of the California Code of Regulations.

1 (c) “Housing credit” means the tax credit for low-income rental
2 housing provided under Section 42 of the federal Internal Revenue
3 Code (26 U.S.C. Sec. 42).

4 (d) “Housing credit applicant” means any owner, sponsor, or
5 developer of a qualifying low-income building or project who
6 applies to the committee for either of the following:

7 (1) An allocation of a portion of the current state housing credit
8 ceiling.

9 (2) A reservation of a portion of the anticipated state housing
10 credit ceiling of a subsequent year.

11 (e) “Housing credit ceiling” means the amount specified in
12 Section 42(h)(3)(C) of the federal Internal Revenue Code (26
13 U.S.C. Sec. 42(h)(3)(C)).

14 (f) “Qualified low-income building” or “project” has the
15 meaning specified in Section 42(c)(2) of the federal Internal
16 Revenue Code (26 U.S.C. Sec. 42(c)(2)).

17 (g) “Agricultural worker” or “farmworker” shall have the same
18 meaning as specified in subdivision (b) of Section 1140.4 of the
19 Labor Code.

20 (h) “Farmworker housing” means ~~housing for agricultural~~
21 ~~workers that is in which at least 50 percent of the units are~~
22 ~~available to, and occupied by, not less than 50 percent of~~
23 ~~farmworkers and their households. The committee may permit an~~
24 ~~owner to temporarily house nonfarmworkers in vacant units in the~~
25 ~~event of a disaster or other critical occurrence. However, such~~
26 ~~emergency shelter shall only be permitted if there are no pending~~
27 ~~qualified farmworker household applications for residency.~~

28 SEC. 2. Section 12206 of the Revenue and Taxation Code is
29 amended to read:

30 12206. (a) (1) There shall be allowed as a credit against the
31 “tax,” as described by Section 12201, a state low-income housing
32 tax credit in an amount equal to the amount determined in
33 subdivision (c), computed in accordance with Section 42 of the
34 Internal Revenue Code except as otherwise provided in this section.

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

39 (3) “Housing sponsor,” for purposes of this section, means the
40 sole owner in the case of a “C” corporation, the partnership in the

1 case of a partnership, and the “S” corporation in the case of an “S”
2 corporation.

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

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

14 (i) The project’s housing sponsor has been allocated by the
15 California Tax Credit Allocation Committee a credit for federal
16 income tax purposes under Section 42 of the Internal Revenue
17 Code.

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

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

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

37 (ii) This subparagraph shall not apply to a project that receives
38 a preliminary reservation of state low-income housing tax credits
39 under the set-aside described in subdivision (c) of Section 50199.20

1 of the Health and Safety Code unless the project also receives a
2 preliminary reservation of federal low-income housing tax credits.

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

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

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

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

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

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

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

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

37 (iii) Notwithstanding clause (i), the California Tax Credit
38 Allocation Committee may allocate the credit pursuant to paragraph
39 (4) of subdivision (c) even if the taxpayer receives federal credits,
40 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code.

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

(ii) An equivalent amount shall be determined by the California Tax Credit Allocation Committee based upon the relative amount required to produce an equivalent state tax credit to the taxpayer.

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

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

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

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

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

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

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

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

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

(i) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside 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 federal 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 (4) In the case of any qualified low-income building that is (A)
29 farmworker housing, as defined by Section 50199.7 of the Health
30 and Safety Code, and (B) is federally subsidized, the term
31 “applicable percentage” means for each of the first three years, 20
32 percent of the qualified basis of the building, and for the fourth
33 year, 15 percent of the qualified basis of the building.

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

beginning with the taxable year in which the increase in qualified basis occurs.

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

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

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

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

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

(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term “Consumer Price Index” means the last Consumer Price Index for All Urban Consumers published by the federal Department of Labor.

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

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

(4) Five hundred thousand dollars (\$500,000) per calendar year for projects to provide farmworker housing, as defined in 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, and the regulatory agreement
16 shall be subordinated, when required, to any lien or encumbrance
17 of any banks or other institutional lenders to the project. The
18 regulatory agreement entered into pursuant to subdivision (f) of
19 Section 50199.14 of the Health and Safety Code, shall apply,
20 provided that the agreement includes all of the following
21 provisions:

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

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

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

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

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

37 (F) A requirement that the housing sponsor notify the California
38 Tax Credit Allocation Committee or its designee and the local
39 agency that can enforce the regulatory agreement if there is a

1 determination by the Internal Revenue Service that the project is
2 not in compliance with Section 42(g) of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 SEC. 3. Section 17058 of the Revenue and Taxation Code is
39 amended to read:

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

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

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

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

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

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

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

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

37 (C) (i) For a project that receives a preliminary reservation of
38 the state low-income housing tax credit, allowed pursuant to
39 subdivision (a), on or after January 1, 2009, and before January 1,
40 2016, the credit shall be allocated to the partners of a partnership

1 owning the project in accordance with the partnership agreement,
2 regardless of how the federal low-income housing tax credit with
3 respect to the project is allocated to the partners, or whether the
4 allocation of the credit under the terms of the agreement has
5 substantial economic effect, within the meaning of Section 704(b)
6 of the Internal Revenue Code.

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

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

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

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

27 (B) In the case of a partnership or an "S" corporation, the
28 housing sponsor shall provide a copy of the California Tax Credit
29 Allocation Committee certification to the taxpayer.

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

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

34 (E) (i) Except as described in clause (ii) or (iii), for buildings
35 located in designated difficult development areas (DDAs) or
36 qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)
37 of the Internal Revenue Code, credits may be allocated under this
38 section in the amounts prescribed in subdivision (c), provided that
39 the amount of credit allocated under Section 42 of the Internal

1 Revenue Code is computed on 100 percent of the qualified basis
2 of the building.

3 (ii) Notwithstanding clause (i), the California Tax Credit
4 Allocation Committee may allocate the credit for buildings located
5 in DDAs or QCTs that are restricted to having 50 percent of its
6 occupants be special needs households, as defined in the California
7 Code of Regulations by the California Tax Credit Allocation
8 Committee, even if the taxpayer receives federal credits pursuant
9 to Section 42(d)(5)(B) of the Internal Revenue Code, provided
10 that the credit allowed under this section shall not exceed 30
11 percent of the eligible basis of the building.

12 (iii) Notwithstanding clause (i), the California Tax Credit
13 Allocation Committee may allocate the credit pursuant to paragraph
14 (4) of subdivision (c) even if the taxpayer receives federal credits,
15 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code.

16 (F) (i) The California Tax Credit Allocation Committee may
17 allocate a credit under this section in exchange for a credit allocated
18 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
19 amounts up to 30 percent of the eligible basis of a building if the
20 credits allowed under Section 42 of the Internal Revenue Code are
21 reduced by an equivalent amount.

22 (ii) An equivalent amount shall be determined by the California
23 Tax Credit Allocation Committee based upon the relative amount
24 required to produce an equivalent state tax credit to the taxpayer.

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

27 (1) In the case of any qualified low-income building placed in
28 service by the housing sponsor during 1987, the term “applicable
29 percentage” means 9 percent for each of the first three years and
30 3 percent for the fourth year for new buildings (whether or not the
31 building is federally subsidized) and for existing buildings.

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

35 (A) For each of the first three years, the percentage prescribed
36 by the Secretary of the Treasury for new buildings that are not
37 federally subsidized for the taxable year, determined in accordance
38 with the requirements of Section 42(b)(2) of the Internal Revenue
39 Code, in lieu of the percentage prescribed in Section 42(b)(1)(B)
40 of the Internal Revenue Code.

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

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

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

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

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

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

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

23 (ii) The Below-Market-Interest-Rate Program pursuant to
24 Section 221(d)(3) of the National Housing Act, Sections
25 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

28 (iv) Programs for rent supplement assistance pursuant to Section
29 101 of the Housing and Urban Development Act of 1965, Section
30 1701s of Title 12 of the United States Code, as amended.

31 (v) Programs pursuant to Section 515 of the Housing Act of
32 1949, Section 1485 of Title 42 of the United States Code, as
33 amended.

34 (vi) The low-income housing credit program set forth in Section
35 42 of the Internal Revenue Code.

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

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

5 (D) The property satisfies the requirements of Section 42(e) of
6 the Internal Revenue Code regarding rehabilitation expenditures,
7 except that the provisions of Section 42(e)(3)(A)(ii)(I) do not apply.

8 (5) In the case of any qualified low-income building that is (A)
9 farmworker housing, as defined by Section 50199.7 of the Health
10 and Safety Code, and (B) is federally subsidized, the term
11 “applicable percentage” means for each of the first three years, 20
12 percent of the qualified basis of the building, and for the fourth
13 year, 15 percent of the qualified basis of the building.

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

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

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

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

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

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

31 (C) Any amount allowed to be distributed under subparagraph
32 (A) that is not available for distribution during the first five years
33 of the compliance period may be accumulated and distributed any
34 time during the first 15 years of the compliance period but not
35 thereafter.

36 (2) The limitation on return applies in the aggregate to the
37 partners if the housing sponsor is a partnership and in the aggregate
38 to the shareholders if the housing sponsor is an “S” corporation.

39 (3) The housing sponsor shall apply any cash available for
40 distribution in excess of the amount eligible to be distributed under

1 paragraph (1) to reduce the rent on rent-restricted units or to
2 increase the number of rent-restricted units subject to the tests of
3 Section 42(g)(1) of the Internal Revenue Code.

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

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

9 (2) The special rule for the first taxable year of the credit period
10 under Section 42(f)(2) of the Internal Revenue Code does not apply
11 to the tax credit under this section.

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

14 If, as of the close of any taxable year in the compliance period,
15 after the first year of the credit period, the qualified basis of any
16 building exceeds the qualified basis of that building as of the close
17 of the first year of the credit period, the housing sponsor, to the
18 extent of its tax credit allocation, shall be eligible for a credit on
19 the excess in an amount equal to the applicable percentage
20 determined pursuant to subdivision (c) for the four-year period
21 beginning with the taxable year in which the increase in qualified
22 basis occurs.

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

25 (1) Section 42(h)(2) of the Internal Revenue Code does not
26 apply and instead the following provisions apply:

27 The total amount for the four-year period of the housing credit
28 dollars allocated in a calendar year to any building shall reduce
29 the aggregate housing credit dollar amount of the California Tax
30 Credit Allocation Committee for the calendar year in which the
31 allocation is made.

32 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
33 (7), and (8) of Section 42(h) of the Internal Revenue Code do not
34 apply to this section.

35 (g) The aggregate housing credit dollar amount that may be
36 allocated annually by the California Tax Credit Allocation
37 Committee pursuant to this section, Section 12206, and Section
38 23610.5 shall be an amount equal to the sum of all the following:

39 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
40 year, and, for the 2002 calendar year and each calendar year

1 thereafter, seventy million dollars (\$70,000,000) increased by the
2 percentage, if any, by which the Consumer Price Index for the
3 preceding calendar year exceeds the Consumer Price Index for the
4 2001 calendar year. For the purposes of this paragraph, the term
5 “Consumer Price Index” means the last Consumer Price Index for
6 All Urban Consumers published by the federal Department of
7 Labor.

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

10 (3) The amount of housing credit ceiling returned in the calendar
11 year. For purposes of this paragraph, the amount of housing credit
12 dollar amount returned in the calendar year equals the housing
13 credit dollar amount previously allocated to any project that does
14 not become a qualified low-income housing project within the
15 period required by this section or to any project with respect to
16 which an allocation is canceled by mutual consent of the California
17 Tax Credit Allocation Committee and the allocation recipient.

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

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

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

30 (i) Section 42(j) of the Internal Revenue Code does not apply
31 and the following requirements of this section shall be set forth in
32 a regulatory agreement between the California Tax Credit
33 Allocation Committee and the housing sponsor, and the regulatory
34 agreement shall be subordinated, when required, to any lien or
35 encumbrance of any banks or other institutional lenders to the
36 project. The regulatory agreement entered into pursuant to
37 subdivision (f) of Section 50199.14 of the Health and Safety Code
38 shall apply, provided that the agreement includes all of the
39 following provisions:

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

1 (2) A requirement that the agreement be recorded in the official
2 records of the county in which the qualified low-income housing
3 project is located.

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

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

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

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

19 (7) A requirement that the housing sponsor, as security for the
20 performance of the housing sponsor's obligations under the
21 regulatory agreement, assign the housing sponsor's interest in rents
22 that it receives from the project, provided that until there is a
23 default under the regulatory agreement, the housing sponsor is
24 entitled to collect and retain the rents.

25 (8) The remedies available in the event of a default under the
26 regulatory agreement that is not cured within a reasonable cure
27 period, include, but are not limited to, allowing any of the parties
28 designated to enforce the regulatory agreement to collect all rents
29 with respect to the project; taking possession of the project and
30 operating the project in accordance with the regulatory agreement
31 until the enforcer determines the housing sponsor is in a position
32 to operate the project in accordance with the regulatory agreement;
33 applying to any court for specific performance; securing the
34 appointment of a receiver to operate the project; or any other relief
35 as may be appropriate.

36 (j) (1) The committee shall allocate the housing credit on a
37 regular basis consisting of two or more periods in each calendar
38 year during which applications may be filed and considered. The
39 committee shall establish application filing deadlines, the maximum
40 percentage of federal and state low-income housing tax credit

1 ceiling that may be allocated by the committee in that period, and
2 the approximate date on which allocations shall be made. If the
3 enactment of federal or state law, the adoption of rules or
4 regulations, or other similar events prevent the use of two allocation
5 periods, the committee may reduce the number of periods and
6 adjust the filing deadlines, maximum percentage of credit allocated,
7 and the allocation dates.

8 (2) The committee shall adopt a qualified allocation plan, as
9 provided in Section 42(m)(1) of the Internal Revenue Code. In
10 adopting this plan, the committee shall comply with the provisions
11 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
12 Code, respectively.

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

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

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

24 (ii) The project's proposed financing, including tax credit
25 proceeds, shall be sufficient to complete the project and that the
26 proposed operating income shall be adequate to operate the project
27 for the extended use period.

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

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

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

35 (vi) The housing sponsor shall demonstrate that the project
36 development team has the experience and the financial capacity
37 to ensure project completion and operation for the extended use
38 period.

39 (vii) The housing sponsor shall demonstrate the amount of tax
40 credit that is necessary for the financial feasibility of the project

1 and its viability as a qualified low-income housing project
2 throughout the extended use period, taking into account operating
3 expenses, a supportable debt service, reserves, funds set aside for
4 rental subsidies and required equity, and a development fee that
5 does not exceed a specified percentage of the eligible basis of the
6 project prior to inclusion of the development fee in the eligible
7 basis, as determined by the committee.

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

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

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

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

18 (i) Projects serving large families in which a substantial number,
19 as defined by the committee, of all residential units are low-income
20 units with three or more bedrooms.

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

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

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

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

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

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

37 The term “secretary” shall be replaced by the term “California
38 Franchise Tax Board.”

39 (l) In the case in which the credit allowed under this section
40 exceeds the net tax, the excess may be carried over to reduce the

1 net tax in the following year, and succeeding taxable years, if
2 necessary, until the credit has been exhausted.

3 (m) A project that received an allocation of a 1989 federal
4 housing credit dollar amount shall be eligible to receive an
5 allocation of a 1990 state housing credit dollar amount, subject to
6 all of the following conditions:

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

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

11 (3) Notwithstanding paragraph (2), a project applying for an
12 allocation under this subdivision is subject to the requirements of
13 paragraph (3) of subdivision (j).

14 (n) The credit period with respect to an allocation of credit in
15 1989 by the California Tax Credit Allocation Committee of which
16 any amount is attributable to unallocated credit from 1987 or 1988
17 shall not begin until after December 31, 1989.

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

21 (p) The provisions of Section 11407(c) of Public Law 101-508,
22 relating to election to accelerate credit, do not apply.

23 (q) The amendments to this section made by the act adding this
24 subdivision apply only to taxable years beginning on or after
25 January 1, 1994.

26 (r) This section shall remain in effect on and after December 1,
27 1990, for as long as Section 42 of the Internal Revenue Code,
28 relating to low-income housing credit, remains in effect. Any
29 unused credit may continue to be carried forward, as provided in
30 subdivision (l), until the credit has been exhausted.

31 SEC. 4. Section 23610.5 of the Revenue and Taxation Code
32 is amended to read:

33 23610.5. (a) (1) There shall be allowed as a credit against the
34 "tax," as defined by Section 23036, a state low-income housing
35 tax credit in an amount equal to the amount determined in
36 subdivision (c), computed in accordance with Section 42 of the
37 Internal Revenue Code except as otherwise provided in this section.

38 (2) "Taxpayer," for purposes of this section, means the sole
39 owner in the case of a "C" corporation, the partners in the case of

1 a partnership, and the shareholders in the case of an “S”
2 corporation.

3 (3) “Housing sponsor,” for purposes of this section, means the
4 sole owner in the case of a “C” corporation, the partnership in the
5 case of a partnership, and the “S” corporation in the case of an “S”
6 corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit for buildings located in DDAs or QCTs that are restricted to having 50 percent of its occupants be special needs households, as defined in the California Code of Regulations by the California Tax Credit Allocation

1 Committee, even if the taxpayer receives federal credits pursuant
2 to Section 42(d)(5)(B) of the Internal Revenue Code, provided
3 that the credit allowed under this section shall not exceed 30
4 percent of the eligible basis of the building.

5 (iii) Notwithstanding clause (i), the California Tax Credit
6 Allocation Committee may allocate the credit pursuant to paragraph
7 (4) of subdivision (c) even if the taxpayer receives federal credits,
8 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code.

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

15 (ii) An equivalent amount shall be determined by the California
16 Tax Credit Allocation Committee based upon the relative amount
17 required to produce an equivalent state tax credit to the taxpayer.

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

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

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

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

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

36 (3) In the case of any qualified low-income building that receives
37 an allocation after 1989 and that is a new building that is federally
38 subsidized or that is an existing building that is “at risk of
39 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 federally 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 (5) In the case of any qualified low-income building that is (A)
4 farmworker housing, as defined by Section 50199.7 of the Health
5 and Safety Code, and (B) is federally subsidized, the term
6 “applicable percentage” means for each of the first three years, 20
7 percent of the qualified basis of the building, and for the fourth
8 year, 15 percent of the qualified basis of the building.

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

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

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

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

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

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

26 (C) Any amount allowed to be distributed under subparagraph
27 (A) that is not available for distribution during the first five years
28 of the compliance period may be accumulated and distributed any
29 time during the first 15 years of the compliance period but not
30 thereafter.

31 (2) The limitation on return applies in the aggregate to the
32 partners if the housing sponsor is a partnership and in the aggregate
33 to the shareholders if the housing sponsor is an “S” corporation.

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

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

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

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

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

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

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

20 (1) Section 42(h)(2) of the Internal Revenue Code does not
21 apply and instead the following provisions apply:

22 The total amount for the four-year credit period of the housing
23 credit dollars allocated in a calendar year to any building shall
24 reduce the aggregate housing credit dollar amount of the California
25 Tax Credit Allocation Committee for the calendar year in which
26 the allocation is made.

27 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
28 (7), and (8) of Section 42(h) of the Internal Revenue Code do not
29 apply.

30 (g) The aggregate housing credit dollar amount that may be
31 allocated annually by the California Tax Credit Allocation
32 Committee pursuant to this section, Section 12206, and Section
33 17058 shall be an amount equal to the sum of all the following:

34 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
35 year, and, for the 2002 calendar year and each calendar year
36 thereafter, seventy million dollars (\$70,000,000) increased by the
37 percentage, if any, by which the Consumer Price Index for the
38 preceding calendar year exceeds the Consumer Price Index for the
39 2001 calendar year. For the purposes of this paragraph, the term
40 “Consumer Price Index” means the last Consumer Price Index for

1 All Urban Consumers published by the federal Department of
2 Labor.

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

5 (3) The amount of housing credit ceiling returned in the calendar
6 year. For purposes of this paragraph, the amount of housing credit
7 dollar amount returned in the calendar year equals the housing
8 credit dollar amount previously allocated to any project that does
9 not become a qualified low-income housing project within the
10 period required by this section or to any project with respect to
11 which an allocation is canceled by mutual consent of the California
12 Tax Credit Allocation Committee and the allocation recipient.

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

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

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

25 (i) Section 42(j) of the Internal Revenue Code does not apply
26 and the following shall be substituted in its place:

27 The requirements of this section shall be set forth in a regulatory
28 agreement between the California Tax Credit Allocation Committee
29 and the housing sponsor, and the regulatory agreement shall be
30 subordinated, when required, to any lien or encumbrance of any
31 banks or other institutional lenders to the project. The regulatory
32 agreement entered into pursuant to subdivision (f) of Section
33 50199.14 of the Health and Safety Code shall apply, provided that
34 the agreement includes all of the following provisions:

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

36 (2) A requirement that the agreement be recorded in the official
37 records of the county in which the qualified low-income housing
38 project is located.

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

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

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

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

16 (7) A requirement that the housing sponsor, as security for the
17 performance of the housing sponsor's obligations under the
18 regulatory agreement, assign the housing sponsor's interest in rents
19 that it receives from the project, provided that until there is a
20 default under the regulatory agreement, the housing sponsor is
21 entitled to collect and retain the rents.

22 (8) The remedies available in the event of a default under the
23 regulatory agreement that is not cured within a reasonable cure
24 period include, but are not limited to, allowing any of the parties
25 designated to enforce the regulatory agreement to collect all rents
26 with respect to the project; taking possession of the project and
27 operating the project in accordance with the regulatory agreement
28 until the enforcer determines the housing sponsor is in a position
29 to operate the project in accordance with the regulatory agreement;
30 applying to any court for specific performance; securing the
31 appointment of a receiver to operate the project; or any other relief
32 as may be appropriate.

33 (j) (1) The committee shall allocate the housing credit on a
34 regular basis consisting of two or more periods in each calendar
35 year during which applications may be filed and considered. The
36 committee shall establish application filing deadlines, the maximum
37 percentage of federal and state low-income housing tax credit
38 ceiling that may be allocated by the committee in that period, and
39 the approximate date on which allocations shall be made. If the
40 enactment of federal or state law, the adoption of rules or

1 regulations, or other similar events prevent the use of two allocation
2 periods, the committee may reduce the number of periods and
3 adjust the filing deadlines, maximum percentage of credit allocated,
4 and allocation dates.

5 (2) The committee shall adopt a qualified allocation plan, as
6 provided in Section 42(m)(1) of the Internal Revenue Code. In
7 adopting this plan, the committee shall comply with the provisions
8 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
9 Code, respectively.

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

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

18 (i) The housing sponsor shall demonstrate there is a need for
19 low-income housing in the community or region for which it is
20 proposed.

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

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

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

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

31 (vi) The housing sponsor shall demonstrate that the project
32 development team has the experience and the financial capacity
33 to ensure project completion and operation for the extended use
34 period.

35 (vii) The housing sponsor shall demonstrate the amount of tax
36 credit that is necessary for the financial feasibility of the project
37 and its viability as a qualified low-income housing project
38 throughout the extended use period, taking into account operating
39 expenses, a supportable debt service, reserves, funds set aside for
40 rental subsidies and required equity, and a development fee that

1 does not exceed a specified percentage of the eligible basis of the
2 project prior to inclusion of the development fee in the eligible
3 basis, as determined by the committee.

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

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

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

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

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

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

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

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

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

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

32 (5) Not less than 20 percent of the low-income housing tax
33 credits available annually under this section, Section 12206, and
34 Section 17058 shall be set aside for allocation to rural areas as
35 defined in Section 50199.21 of the Health and Safety Code. Any
36 amount of credit set aside for rural areas remaining on or after
37 October 31 of any calendar year shall be available for allocation
38 to any eligible project. No amount of credit set aside for rural areas
39 shall be considered available for any eligible project so long as
40 there are eligible rural applications pending on October 31.

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

3 The term “secretary” shall be replaced by the term “California
4 Franchise Tax Board.”

5 (l) In the case in which the credit allowed under this section
6 exceeds the “tax,” the excess may be carried over to reduce the
7 “tax” in the following year, and succeeding taxable years if
8 necessary, until the credit has been exhausted.

9 (m) A project that received an allocation of a 1989 federal
10 housing credit dollar amount shall be eligible to receive an
11 allocation of a 1990 state housing credit dollar amount, subject to
12 all of the following conditions:

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

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

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

20 (n) The credit period with respect to an allocation of credit in
21 1989 by the California Tax Credit Allocation Committee of which
22 any amount is attributable to unallocated credit from 1987 or 1988
23 shall not begin until after December 31, 1989.

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

27 (p) The provisions of Section 11407(c) of Public Law 101-508,
28 relating to election to accelerate credit, do not apply.

29 (q) (1) A corporation may elect to assign any portion of any
30 credit allowed under this section to one or more affiliated
31 corporations for each taxable year in which the credit is allowed.
32 For purposes of this subdivision, “affiliated corporation” has the
33 meaning provided in subdivision (b) of Section 25110, as that
34 section was amended by Chapter 881 of the Statutes of 1993, as
35 of the last day of the taxable year in which the credit is allowed,
36 except that “100 percent” is substituted for “more than 50 percent”
37 wherever it appears in the section, as that section was amended by
38 Chapter 881 of the Statutes of 1993, and “voting common stock”
39 is substituted for “voting stock” wherever it appears in the section,

1 as that section was amended by Chapter 881 of the Statutes of
2 1993.

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

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

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

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

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

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

17 (s) The amendments to this section made by Chapter 1222 of
18 the Statutes of 1993 shall apply only to taxable years beginning
19 on or after January 1, 1994, except that paragraph (1) of subdivision
20 (q), as amended, shall apply to taxable years beginning on or after
21 January 1, 1993.

22 SEC. 5. This act provides for a tax levy within the meaning
23 of Article IV of the Constitution and shall go into immediate effect.