

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY MAY 16, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2140

**Introduced by Assembly Members Roger Hernández, Alejo,
Eduardo Garcia, 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 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 in which at least 50% of the units are available to, and occupied by, farmworkers and their households.

~~Existing law requires the Department of Housing and Community Development to establish the Joe Serna, Jr. Farmworker Housing Grant Program under which, subject to the availability of funds, grants or loans, or both, are required to be made to local public entities, nonprofit corporations, limited liability companies, and limited partnerships, for the construction or rehabilitation of housing for agricultural employees and their families or for the acquisition of manufactured housing as part of a program to address and remedy the impacts of current and potential displacement of farmworker families from existing labor camps, mobilehome parks, or other housing.~~

~~This bill would declare the intent of the Legislature to enact legislation that would appropriate \$4,500,000 from the General Fund to the Joe Serna, Jr. Farmworker Housing Grant Program. The bill would also declare the intent of the Legislature to enact legislation that, if that appropriation were made, would prohibit the California Tax Credit Allocation Committee from allocating the unallocated credit amount of \$4,500,000, with respect to the low-income housing tax credit for farmworker housing, to housing sponsors for projects to provide farmworker housing, as provided.~~

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. (a) It is the intent of the Legislature to enact~~
2 ~~legislation that would appropriate four million five hundred~~
3 ~~thousand dollars (\$4,500,000) from the General Fund to the Joe~~
4 ~~Serna, Jr. Farmworker Housing Grant Program.~~

5 ~~(b) It is the intent of the Legislature to enact legislation that, if~~
6 ~~the appropriation described in subdivision (a) were made, would~~
7 ~~prohibit the California Tax Credit Allocation Committee from~~
8 ~~allocating the unallocated credit amount of four million five~~
9 ~~hundred thousand dollars (\$4,500,000), with respect to the~~
10 ~~low-income housing tax credit for farmworker housing, to housing~~
11 ~~sponsors for projects to provide farmworker housing pursuant to~~
12 ~~Sections 12206, 17058, and 23610.5 of the Revenue and Taxation~~
13 ~~Code.~~

14 ~~SEC. 2.~~

15 ~~SECTION 1.~~ Section 50199.7 of the Health and Safety Code
16 is amended to read:

17 50199.7. As used in this chapter:

18 (a) “Committee” means the Mortgage Bond and Tax Credit
19 Allocation Committee, which is renamed the California Tax Credit
20 Allocation Committee. All references to “committee” shall mean
21 the California Tax Credit Allocation Committee.

22 (b) “Household” has the same meaning as defined in Section
23 7602 of Title 25 of the California Code of Regulations.

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

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

30 (1) An allocation of a portion of the current state housing credit
31 ceiling.

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

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

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

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

(h) “Farmworker housing” means housing in which at least 50 percent of the units are available to, and occupied by, farmworkers and their households. The committee may permit an owner to temporarily house nonfarmworkers in vacant units in the event of a disaster or other critical occurrence. However, such emergency shelter shall only be permitted if there are no pending qualified farmworker household applications for residency.

~~SEC. 3.~~

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

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

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

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

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

(A) Except for projects to provide farmworker housing, as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, that are allocated credits solely under the set-aside

1 described in subdivision (c) of Section 50199.20 of the Health and
2 Safety Code, the low-income housing project shall be located in
3 California and shall meet either of the following requirements:

4 (i) The project's housing sponsor has been allocated by the
5 California Tax Credit Allocation Committee a credit for federal
6 income tax purposes under Section 42 of the Internal Revenue
7 Code.

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

10 (B) The California Tax Credit Allocation Committee shall not
11 require fees for the credit under this section in addition to those
12 fees required for applications for the tax credit pursuant to Section
13 42 of the Internal Revenue Code. The committee may require a
14 fee if the application for the credit under this section is submitted
15 in a calendar year after the year the application is submitted for
16 the federal tax credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (ii) The Below-Market-Interest-Rate Program pursuant to
33 Section 221(d)(3) of the National Housing Act, Sections
34 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

37 (iv) Programs for rent supplement assistance pursuant to Section
38 101 of the Housing and Urban Development Act of 1965, Section
39 1701s of Title 12 of the United States Code, as amended.

1 (v) Programs pursuant to Section 515 of the Housing Act of
2 1949, Section 1485 of Title 42 of the United States Code, as
3 amended.

4 (vi) The low-income housing credit program set forth in Section
5 42 of the Internal Revenue Code.

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

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

14 (D) The property satisfies the requirements of Section 42(e) of
15 the Internal Revenue Code regarding rehabilitation expenditures,
16 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
17 apply.

18 (4) In the case of any qualified low-income building that is (A)
19 farmworker housing, as defined by Section 50199.7 of the Health
20 and Safety Code, and (B) is federally subsidized, the term
21 “applicable percentage” means for each of the first three years, 20
22 percent of the qualified basis of the building, and for the fourth
23 year, 15 percent of the qualified basis of the building.

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

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

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

31 (i) The owner equity that shall include the amount of the capital
32 contributions actually paid to the housing sponsor and shall not
33 include any amounts until they are paid on an investor 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 be accumulated and 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 taxable year in which the increase in qualified
32 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
18 Labor.

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

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

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

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

37 (h) The term “compliance period” as defined in Section 42(i)(1)
38 of the Internal Revenue Code is modified to mean, with respect to
39 any building, the period of 30 consecutive taxable years beginning
40 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, and the regulatory agreement
7 shall be subordinated, when required, to any lien or encumbrance
8 of any banks or other institutional lenders to the project. The
9 regulatory agreement entered into pursuant to subdivision (f) of
10 Section 50199.14 of the Health and Safety Code, shall apply,
11 provided that the agreement includes all of the following
12 provisions:

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

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

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

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

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

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

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

39 (H) The remedies available in the event of a default under the
40 regulatory agreement that is not cured within a reasonable cure

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

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

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

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

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

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

38 (ii) The project's proposed financing, including tax credit
39 proceeds, shall be sufficient to complete the project and that the

1 proposed operating income shall be adequate to operate the project
2 for the extended use period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 4.~~

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

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

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

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case

1 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) The low-income housing project shall be located in
9 California and shall meet either of the following requirements:

10 (i) Except for projects to provide farmworker housing, as defined
11 in subdivision (h) of Section 50199.7 of the Health and Safety
12 Code, that are allocated credits solely under the set-aside described
13 in subdivision (c) of Section 50199.20 of the Health and Safety
14 Code, 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) To the extent the allocation of the credit to a partner under
38 this section lacks substantial economic effect, any loss or deduction
39 otherwise allowable under this part that is attributable to the sale
40 or other disposition of that partner’s partnership interest made prior

1 to the expiration of the federal credit shall not be allowed in the
2 taxable year in which the sale or other disposition occurs, but shall
3 instead be deferred until and treated as if it occurred in the first
4 taxable year immediately following the taxable year in which the
5 federal credit period expires for the project described in clause (i).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (ii) The Below-Market-Interest-Rate Program pursuant to
13 Section 221(d)(3) of the National Housing Act, Sections
14 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

17 (iv) Programs for rent supplement assistance pursuant to Section
18 101 of the Housing and Urban Development Act of 1965, Section
19 1701s of Title 12 of the United States Code, as amended.

20 (v) Programs pursuant to Section 515 of the Housing Act of
21 1949, Section 1485 of Title 42 of the United States Code, as
22 amended.

23 (vi) The low-income housing credit program set forth in Section
24 42 of the Internal Revenue Code.

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

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

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

36 (5) In the case of any qualified low-income building that is (A)
37 farmworker housing, as defined by Section 50199.7 of the Health
38 and Safety Code, and (B) is federally subsidized, the term
39 “applicable percentage” means for each of the first three years, 20

1 percent of the qualified basis of the building, and for the fourth
2 year, 15 percent of the qualified basis of the building.

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

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

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

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

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

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

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

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

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

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

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

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

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

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage 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 does not apply and instead the following provisions apply:

The total amount for the four-year 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 do not apply to this section.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, 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

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

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

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

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

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

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

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

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

36 (4) A provision that the regulatory agreement shall be deemed
37 a contract enforceable by tenants as third-party beneficiaries thereto
38 and that allows individuals, whether prospective, present, or former
39 occupants of the building, who meet the income limitation

1 applicable to the building, the right to enforce the regulatory
2 agreement in any state court.

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

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

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

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

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

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

1 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
2 Code, respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 The term “secretary” shall be replaced by the term “California
28 Franchise Tax Board.”

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

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

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

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

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

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

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

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

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

16 (r) This section shall remain in effect on and after December 1,
17 1990, for as long as Section 42 of the Internal Revenue Code,
18 relating to low-income housing credit, remains in effect. Any
19 unused credit may continue to be carried forward, as provided in
20 subdivision (l), until the credit has been exhausted.

21 ~~SEC. 5.~~

22 *SEC. 4.* Section 23610.5 of the Revenue and Taxation Code is
23 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (4) For purposes of this section, the term “at risk of conversion,”
38 with respect to an existing property means a property that satisfies
39 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 federally 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 (5) In the case of any qualified low-income building that is (A)
35 farmworker housing, as defined by Section 50199.7 of the Health
36 and Safety Code, and (B) is federally subsidized, the term
37 “applicable percentage” means for each of the first three years, 20
38 percent of the qualified basis of the building, and for the fourth
39 year, 15 percent of the qualified basis of the building.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (g) The aggregate housing credit dollar amount that may be
23 allocated annually by the California Tax Credit Allocation
24 Committee pursuant to this section, Section 12206, and Section
25 17058 shall be an amount equal to the sum of all the following:

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

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

37 (3) The amount of housing credit ceiling returned in the calendar
38 year. For purposes of this paragraph, the amount of housing credit
39 dollar amount returned in the calendar year equals the housing
40 credit dollar amount previously allocated to any project that does

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

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

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

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

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

19 The requirements of this section shall be set forth in a regulatory
20 agreement between the California Tax Credit Allocation Committee
21 and the housing sponsor, and the regulatory agreement shall be
22 subordinated, when required, to any lien or encumbrance of any
23 banks or other institutional lenders to the project. The regulatory
24 agreement entered into pursuant to subdivision (f) of Section
25 50199.14 of the Health and Safety Code shall apply, provided that
26 the agreement includes all of the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 The term “secretary” shall be replaced by the term “California
36 Franchise Tax Board.”

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

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

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

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

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

12 (n) The credit period with respect to an allocation of credit in
13 1989 by the California Tax Credit Allocation Committee of which
14 any amount is attributable to unallocated credit from 1987 or 1988
15 shall not begin until after December 31, 1989.

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

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

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

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

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

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

39 (C) May be changed for any subsequent taxable year if the
40 election to make the assignment is expressly shown on each of the

1 returns of the affiliated corporations that assign and receive the
2 credits.

3 (r) 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 credit, remains in effect.

8 (s) The amendments to this section made by Chapter 1222 of
9 the Statutes of 1993 shall apply only to taxable years beginning
10 on or after January 1, 1994, except that paragraph (1) of subdivision
11 (q), as amended, shall apply to taxable years beginning on or after
12 January 1, 1993.

13 ~~SEC. 6.~~

14 SEC. 5. This act provides for a tax levy within the meaning
15 of Article IV of the California Constitution and shall go into
16 immediate effect.