

AMENDED IN SENATE AUGUST 1, 2016

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.

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

1 (d) "Housing credit applicant" means any owner, sponsor, or
2 developer of a qualifying low-income building or project who
3 applies to the committee for either of the following:

4 (1) An allocation of a portion of the current state housing credit
5 ceiling.

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

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

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

14 (g) "Agricultural worker" or "farmworker" shall have the same
15 meaning as specified in subdivision (b) of Section 1140.4 of the
16 Labor Code.

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

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

26 ~~12206. (a) (1) There shall be allowed as a credit against the~~
27 ~~"tax," as described by Section 12201, a state low-income housing~~
28 ~~tax credit in an amount equal to the amount determined in~~
29 ~~subdivision (c), computed in accordance with Section 42 of the~~
30 ~~Internal Revenue Code except as otherwise provided in this section.~~

31 ~~(2) "Taxpayer," for purposes of this section, means the sole~~
32 ~~owner in the case of a "C" corporation, the partners in the case of~~
33 ~~a partnership, and the shareholders in the case of an "S"~~
34 ~~corporation.~~

35 ~~(3) "Housing sponsor," for purposes of this section, means the~~
36 ~~sole owner in the case of a "C" corporation, the partnership in the~~
37 ~~case of a partnership, and the "S" corporation in the case of an "S"~~
38 ~~corporation.~~

39 ~~(b) (1) The amount of the credit allocated to any housing~~
40 ~~sponsor shall be authorized by the California Tax Credit Allocation~~

1 Committee, or any successor thereof, based on a project's need
2 for the credit for economic feasibility in accordance with the
3 requirements of this section.

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

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

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

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

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

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

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

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

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

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

9 ~~(ii) In the case of a failure to attach a copy of the certification~~
10 ~~for the year to the return in which a tax credit is claimed under this~~
11 ~~section, no credit under this section shall be allowed for that year~~
12 ~~until a copy of that certification is provided.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 ~~(iv) Programs for rent supplement assistance pursuant to Section~~
7 ~~101 of the Housing and Urban Development Act of 1965, Section~~
8 ~~1701s of Title 12 of the United States Code, as amended.~~

9 ~~(v) Programs pursuant to Section 515 of the Housing Act of~~
10 ~~1949, Section 1485 of Title 42 of the United States Code, as~~
11 ~~amended.~~

12 ~~(vi) The low-income housing credit program set forth in Section~~
13 ~~42 of the Internal Revenue Code.~~

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

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

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

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

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

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

38 ~~(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)(H), (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.

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

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

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

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

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

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

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

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

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

~~(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee and the local 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(e) 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 ~~(e), 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 (e) 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~~

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

(iii) Notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit pursuant to paragraph (4) of subdivision (c) even if the taxpayer receives federal credits, 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 placed in service by the housing sponsor during 1987, the term “applicable percentage” means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) 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)(B) 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(e)(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 (e) 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 (e) 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(e)(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~~

~~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.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the 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 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(e) 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. 2. Section 12206 of the Revenue and Taxation Code is*
23 *amended to read:*

24 12206. (a) (1) There shall be allowed as a credit against the
25 “tax,” described by Section 12201, 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, relating to low-income housing credit,
29 except as otherwise provided in this section.

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

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

38 (b) (1) The amount of the credit allocated to any housing
39 sponsor shall be authorized by the California Tax Credit Allocation
40 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) Except for projects to provide farmworker housing, as
4 defined in subdivision (h) of Section 50199.7 of the Health and
5 Safety Code, that are allocated credits solely under the set-aside
6 described in subdivision (c) of Section 50199.20 of the Health and
7 Safety Code, the low-income housing project shall be located in
8 California and shall meet either of the following requirements:

9 (i) 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, relating to low-income housing credit.

13 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
14 Internal Revenue Code, relating to special rule where 50 percent
15 or more of building is financed with tax-exempt bonds subject to
16 volume cap.

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

24 (C) (i) For a project that receives a preliminary reservation of
25 the state low-income housing tax credit, allowed pursuant to
26 subdivision (a), on or after January 1, 2009, and before January 1,
27 2020, the credit shall be allocated to the partners of a partnership
28 owning the project in accordance with the partnership agreement,
29 regardless of how the federal low-income housing tax credit with
30 respect to the project is allocated to the partners, or whether the
31 allocation of the credit under the terms of the agreement has
32 substantial economic effect, within the meaning of Section 704(b)
33 of the Internal Revenue Code, relating to determination of
34 distributive share.

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

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

~~(D)~~

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

~~(E)~~

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code, relating to low-income housing credit, shall apply to this section.

~~(F)~~

(E) (i) Except as described in clause ~~(ii)~~, (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, relating to increase in credit for buildings in high-cost areas, 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, relating to low-income housing credit, 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 Committee, even if the taxpayer receives federal credits pursuant to Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas, provided that the credit allowed under this section shall not exceed 30 percent of the eligible basis of the building.

(iii) *Notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit pursuant to paragraph (4) of subdivision (c) even if the taxpayer receives*

1 *federal credits, pursuant to Section 42(d)(5)(B) of the Internal*
2 *Revenue Code.*

3 ~~(G)~~

4 (F) (i) The California Tax Credit Allocation Committee may
5 allocate a credit under this section in exchange for a credit allocated
6 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
7 relating to increase in credit for buildings in high-cost areas, 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,
10 relating to low-income housing credit, are reduced by an equivalent
11 amount.

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

15 (c) Section 42(b) of the Internal Revenue Code, relating to
16 applicable percentage: 70 percent present value credit for certain
17 new buildings; 30 percent present value credit for certain other
18 buildings, shall be modified as follows:

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

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

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

31 (2) In the case of any qualified low-income building that receives
32 an allocation after 1989 and that is a new building that is federally
33 subsidized or that is an existing building that is “at risk of
34 conversion,” 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 federally
37 subsidized for the taxable year.

38 (B) For the fourth year, the difference between 13 percent and
39 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 pursuant to Section 8 of the United States Housing Act of 1937, Section 1437f of Title 42 of the United States Code, as amended.

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

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

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

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

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

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

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

(D) The property satisfies the requirements of Section 42(e) of the Internal Revenue Code, relating to rehabilitation expenditures treated as separate new building, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(4) In the case of any qualified low-income building that is (A) farmworker housing, as defined by Section 50199.7 of the Health and Safety Code, and (B) is federally subsidized, the term

1 *“applicable percentage” means for each of the first three years,*
2 *20 percent of the qualified basis of the building, and for the fourth*
3 *year, 15 percent of the qualified basis of the building.*

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

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

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

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

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

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

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

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

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

37 (e) The provisions of Section 42(f) of the Internal Revenue
38 Code, relating to definition and special rules relating to credit
39 period, shall be modified as follows:

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

5 (2) The special rule for the first taxable year of the credit period
6 under Section 42(f)(2) of the Internal Revenue Code, relating to
7 special rule for 1st year of credit period, shall not apply to the tax
8 credit under this section.

9 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
10 determination of applicable percentage with respect to increases
11 in qualified basis after 1st year of credit period, is modified to
12 read:

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

22 (f) The provisions of Section 42(h) of the Internal Revenue
23 Code, relating to limitation on aggregate credit allowable with
24 respect to projects located in a state, shall be modified as follows:

25 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
26 allocated credit amount to apply to all taxable years ending during
27 or after credit allocation year, does not apply and instead the
28 following provisions apply:

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

34 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
35 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
36 to limitation on aggregate credit allowable with respect to projects
37 located in a state, do not apply to this section.

38 (g) The aggregate housing credit dollar amount that may be
39 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.

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

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

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

(2) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be

1 subordinated, when required, to any lien or encumbrance of any
2 banks or other institutional lenders to the project. The regulatory
3 agreement entered into pursuant to subdivision (f) of Section
4 50199.14 of the Health and Safety Code, shall apply, provided that
5 the agreement includes all of the following provisions:

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

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

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

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

19 (E) A provision incorporating the requirements of Section 42
20 of the Internal Revenue Code, relating to low-income housing
21 credit, as modified by this section.

22 (F) A requirement that the housing sponsor notify the California
23 Tax Credit Allocation Committee or its designee and the local
24 agency that can enforce the regulatory agreement if there is a
25 determination by the Internal Revenue Service that the project is
26 not in compliance with Section 42(g) of the Internal Revenue Code,
27 relating to qualified low-income housing project.

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

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

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

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

17 (2) The committee shall adopt a qualified allocation plan, as
18 provided in Section 42(m)(1) of the Internal Revenue Code, relating
19 to plans for allocation of credit among projects. In adopting this
20 plan, the committee shall comply with the provisions of Sections
21 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
22 relating to qualified allocation plan and relating to certain selection
23 criteria must be used, respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (k) Section 42(l) of the Internal Revenue Code, relating to
10 certifications and other reports to secretary, shall be modified as
11 follows:

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

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

18 (m) 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 1993.

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

23 (o) (1) For a project that receives a preliminary reservation
24 under this section beginning on or after January 1, 2016, and before
25 January 1, 2020, a taxpayer may make an irrevocable election in
26 its application to the California Tax Credit Allocation Committee
27 to sell all or any portion of any credit allowed under this section
28 to one or more unrelated parties for each taxable year in which the
29 credit is allowed subject to both of the following conditions:

30 (A) The credit is sold for consideration that is not less than 80
31 percent of the amount of the credit.

32 (B) The unrelated party or parties purchasing any or all of the
33 credit pursuant to this subdivision is a taxpayer allowed the credit
34 under this section for the taxable year of the purchase or any prior
35 taxable year or is a taxpayer allowed the federal credit under
36 Section 42 of the Internal Revenue Code, relating to low-income
37 housing credit, for the taxable year of the purchase or any prior
38 taxable year in connection with any project located in this state.
39 For purposes of this subparagraph, “taxpayer allowed the credit
40 under this section” means a taxpayer that is allowed the credit

1 under this section without regard to the purchase of a credit
2 pursuant to this subdivision.

3 (2) (A) The taxpayer that originally received the credit shall
4 report to the California Tax Credit Allocation Committee within
5 10 days of the sale of the credit, in the form and manner specified
6 by the California Tax Credit Allocation Committee, all required
7 information regarding the purchase and sale of the credit, including
8 the social security or other taxpayer identification number of the
9 unrelated party or parties to whom the credit has been sold, the
10 face amount of the credit sold, and the amount of consideration
11 received by the taxpayer for the sale of the credit.

12 (B) The California Tax Credit Allocation Committee shall
13 provide an annual listing to the Franchise Tax Board, in a form
14 and manner agreed upon by the California Tax Credit Allocation
15 Committee and the Franchise Tax Board, of the taxpayers that
16 have sold or purchased a credit pursuant to this subdivision.

17 (3) (A) A credit may be sold pursuant to this subdivision to
18 more than one unrelated party.

19 (B) (i) Except as provided in clause (ii), a credit shall not be
20 resold by the unrelated party to another taxpayer or other party.

21 (ii) All or any portion of any credit allowed under this section
22 may be resold once by an original purchaser to one or more
23 unrelated parties, subject to all of the requirements of this
24 subdivision.

25 (4) Notwithstanding any other law, the taxpayer that originally
26 received the credit that is sold pursuant to paragraph (1) shall
27 remain solely liable for all obligations and liabilities imposed on
28 the taxpayer by this section with respect to the credit, none of
29 which shall apply to a party to whom the credit has been sold or
30 subsequently transferred. Parties that purchase credits pursuant to
31 paragraph (1) shall be entitled to utilize the purchased credits in
32 the same manner in which the taxpayer that originally received
33 the credit could utilize them.

34 (5) A taxpayer shall not sell a credit allowed by this section if
35 the taxpayer was allowed the credit on any tax return of the
36 taxpayer.

37 (6) Notwithstanding paragraph (1), the taxpayer, with the
38 approval of the Executive Director of the California Tax Credit
39 Allocation Committee, may rescind the election to sell all or any
40 portion of the credit allowed under this section if the consideration

1 for the credit falls below 80 percent of the amount of the credit
2 after the California Tax Credit Allocation Committee reservation.

3 (p) The California Tax Credit Allocation Committee may
4 prescribe rules, guidelines, or procedures necessary or appropriate
5 to carry out the purposes of this section, including any guidelines
6 regarding the allocation of the credit allowed under this section.
7 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
8 3 of Title 2 of the Government Code shall not apply to any rule,
9 guideline, or procedure prescribed by the California Tax Credit
10 Allocation Committee pursuant to this section.

11 (q) This section shall remain in effect for as long as Section 42
12 of the Internal Revenue Code, relating to low-income housing
13 credit, remains in effect.

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

16 17058. (a) (1) There shall be allowed as a credit against the
17 “net tax,” defined by Section 17039, a state low-income housing
18 tax credit in an amount equal to the amount determined in
19 subdivision (c), computed in accordance with Section 42 of the
20 Internal Revenue Code, relating to low-income housing credit,
21 except as otherwise provided in this section.

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

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

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

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

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

1 California Tax Credit Allocation Committee a credit for federal
2 income tax purposes under Section 42 of the Internal Revenue
3 Code, relating to low-income housing credit.

4 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
5 Internal Revenue Code, relating to special rule where 50 percent
6 or more of building is financed with tax-exempt bonds subject to
7 volume cap.

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

15 (C) (i) For a project that receives a preliminary reservation of
16 the state low-income housing tax credit, allowed pursuant to
17 subdivision (a), on or after January 1, 2009, and before January 1,
18 2020, the credit shall be allocated to the partners of a partnership
19 owning the project in accordance with the partnership agreement,
20 regardless of how the federal low-income housing tax credit with
21 respect to the project is allocated to the partners, or whether the
22 allocation of the credit under the terms of the agreement has
23 substantial economic effect, within the meaning of Section 704(b)
24 of the Internal Revenue Code, relating to determination of
25 distributive share.

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

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

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

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

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

9 (D) All elections made by the taxpayer pursuant to Section 42
10 of the Internal Revenue Code, relating to low-income housing
11 credit, apply to this section.

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

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

31 *(iii) Notwithstanding clause (i), the California Tax Credit*
32 *Allocation Committee may allocate the credit pursuant to*
33 *paragraph (5) of subdivision (c) even if the taxpayer receives*
34 *federal credits, pursuant to Section 42(d)(5)(B) of the Internal*
35 *Revenue Code.*

36 (F) (i) The California Tax Credit Allocation Committee may
37 allocate a credit under this section in exchange for a credit allocated
38 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
39 relating to increase in credit for buildings in high-cost areas, in
40 amounts up to 30 percent of the eligible basis of a building if the

1 credits allowed under Section 42 of the Internal Revenue Code,
2 relating to low-income housing credit, are reduced by an equivalent
3 amount.

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

7 (c) Section 42(b) of the Internal Revenue Code, relating to
8 applicable percentage: 70 percent present value credit for certain
9 new buildings; 30 percent present value credit for certain other
10 buildings, shall be modified as follows:

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

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

19 (A) For each of the first three years, the percentage prescribed
20 by the Secretary of the Treasury for new buildings that are not
21 federally subsidized for the taxable year, determined in accordance
22 with the requirements of Section 42(b)(2) of the Internal Revenue
23 Code, relating to temporary minimum credit rate for nonfederally
24 subsidized new buildings, in lieu of the percentage prescribed in
25 Section 42(b)(1)(A) 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, relating to low-income housing
22 credit.

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

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

31 (D) The property satisfies the requirements of Section 42(e) of
32 the Internal Revenue Code, relating to rehabilitation expenditures
33 treated as separate new building, except that the provisions of
34 Section 42(e)(3)(A)(ii)(I) shall not apply.

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

(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, relating to in general.

(e) The provisions of Section 42(f) of the Internal Revenue Code, relating to definition and special rules relating to credit period, shall be modified as follows:

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

1 (2) The special rule for the first taxable year of the credit period
2 under Section 42(f)(2) of the Internal Revenue Code, relating to
3 special rules for 1st year of credit period, shall not apply to the tax
4 credit under this section.

5 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
6 determination of applicable percentage with respect to increases
7 in qualified basis after 1st year of credit period, is modified to
8 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 taxable year in which the increase in qualified
17 basis occurs.

18 (f) The provisions of Section 42(h) of the Internal Revenue
19 Code, relating to limitation on aggregate credit allowable with
20 respect to projects located in a state, shall be modified as follows:

21 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
22 allocated credit amount to apply to all taxable years ending during
23 or after credit allocation year, does not apply and instead the
24 following provisions apply:

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

30 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
31 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
32 to limitation on aggregate credit allowable with respect to projects
33 located in a state, do not apply to this section.

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

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

1 percentage, if any, by which the Consumer Price Index for the
2 preceding calendar year exceeds the Consumer Price Index for the
3 2001 calendar year. For the purposes of this paragraph, the term
4 “Consumer Price Index” means the last Consumer Price Index for
5 All Urban Consumers published by the federal Department of
6 Labor.

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

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

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

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

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

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

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

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

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

38 (j) (1) The committee shall allocate the housing credit on a
39 regular basis consisting of two or more periods in each calendar
40 year during which applications may be filed and considered. The

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

10 (2) The committee shall adopt a qualified allocation plan, as
11 provided in Section 42(m)(1) of the Internal Revenue Code, relating
12 to plans for allocation of credit among projects. In adopting this
13 plan, the committee shall comply with the provisions of Sections
14 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
15 relating to qualified allocation plan and relating to certain selection
16 criteria must be used, respectively.

17 (3) Notwithstanding Section 42(m) of the Internal Revenue
18 Code, relating to responsibilities of housing credit agencies, the
19 California Tax Credit Allocation Committee shall allocate housing
20 credits in accordance with the qualified allocation plan and
21 regulations, which shall include the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (k) Section 42(l) of the Internal Revenue Code, relating to
2 certifications and other reports to secretary, shall be modified as
3 follows:

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

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

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

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

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

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

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

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

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

30 (q) (1) For a project that receives a preliminary reservation
31 under this section beginning on or after January 1, 2016, and before
32 January 1, 2020, a taxpayer may make an irrevocable election in
33 its application to the California Tax Credit Allocation Committee
34 to sell all or any portion of any credit allowed under this section
35 to one or more unrelated parties for each taxable year in which the
36 credit is allowed subject to both of the following conditions:

37 (A) The credit is sold for consideration that is not less than 80
38 percent of the amount of the credit.

39 (B) The unrelated party or parties purchasing any or all of the
40 credit pursuant to this subdivision is a taxpayer allowed the credit

1 under this section for the taxable year of the purchase or any prior
2 taxable year or is a taxpayer allowed the federal credit under
3 Section 42 of the Internal Revenue Code, relating to low-income
4 housing credit, for the taxable year of the purchase or any prior
5 taxable year in connection with any project located in this state.
6 For purposes of this subparagraph, “taxpayer allowed the credit
7 under this section” means a taxpayer that is allowed the credit
8 under this section without regard to the purchase of a credit
9 pursuant to this subdivision.

10 (2) (A) The taxpayer that originally received the credit shall
11 report to the California Tax Credit Allocation Committee within
12 10 days of the sale of the credit, in the form and manner specified
13 by the California Tax Credit Allocation Committee, all required
14 information regarding the purchase and sale of the credit, including
15 the social security or other taxpayer identification number of the
16 unrelated party or parties to whom the credit has been sold, the
17 face amount of the credit sold, and the amount of consideration
18 received by the taxpayer for the sale of the credit.

19 (B) The California Tax Credit Allocation Committee shall
20 provide an annual listing to the Franchise Tax Board, in a form
21 and manner agreed upon by the California Tax Credit Allocation
22 Committee and the Franchise Tax Board, of the taxpayers that
23 have sold or purchased a credit pursuant to this subdivision.

24 (3) (A) A credit may be sold pursuant to this subdivision to
25 more than one unrelated party.

26 (B) (i) Except as provided in clause (ii), a credit shall not be
27 resold by the unrelated party to another taxpayer or other party.

28 (ii) All or any portion of any credit allowed under this section
29 may be resold once by an original purchaser to one or more
30 unrelated parties, subject to all of the requirements of this
31 subdivision.

32 (4) Notwithstanding any other law, the taxpayer that originally
33 received the credit that is sold pursuant to paragraph (1) shall
34 remain solely liable for all obligations and liabilities imposed on
35 the taxpayer by this section with respect to the credit, none of
36 which shall apply to a party to whom the credit has been sold or
37 subsequently transferred. Parties that purchase credits pursuant to
38 paragraph (1) shall be entitled to utilize the purchased credits in
39 the same manner in which the taxpayer that originally received
40 the credit could utilize them.

1 (5) A taxpayer shall not sell a credit allowed by this section if
2 the taxpayer was allowed the credit on any tax return of the
3 taxpayer.

4 (6) Notwithstanding paragraph (1), the taxpayer, with the
5 approval of the Executive Director of the California Tax Credit
6 Allocation Committee, may rescind the election to sell all or any
7 portion of the credit allowed under this section if the consideration
8 for the credit falls below 80 percent of the amount of the credit
9 after the California Tax Credit Allocation Committee reservation.

10 (r) The California Tax Credit Allocation Committee may
11 prescribe rules, guidelines, or procedures necessary or appropriate
12 to carry out the purposes of this section, including any guidelines
13 regarding the allocation of the credit allowed under this section.
14 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
15 3 of Title 2 of the Government Code shall not apply to any rule,
16 guideline, or procedure prescribed by the California Tax Credit
17 Allocation Committee pursuant to this section.

18 (s) The amendments to this section made by Chapter 1222 of
19 the Statutes of 1993 apply only to taxable years beginning on or
20 after January 1, 1994.

21 (t) This section shall remain in effect on and after December 1,
22 1990, for as long as Section 42 of the Internal Revenue Code,
23 relating to low-income housing credit, remains in effect. Any
24 unused credit may continue to be carried forward, as provided in
25 subdivision (l), until the credit has been exhausted.

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

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

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

38 (3) “Housing sponsor,” for purposes of this section, means the
39 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) 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, relating to low-income housing credit.

18 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
19 Internal Revenue Code, relating to special rule where 50 percent
20 or more of building is financed with tax-exempt bonds subject to
21 volume cap.

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

29 (C) (i) For a project that receives a preliminary reservation of
30 the state low-income housing tax credit, allowed pursuant to
31 subdivision (a), on or after January 1, 2009, and before January 1,
32 2020, the credit shall be allocated to the partners of a partnership
33 owning the project in accordance with the partnership agreement,
34 regardless of how the federal low-income housing tax credit with
35 respect to the project is allocated to the partners, or whether the
36 allocation of the credit under the terms of the agreement has
37 substantial economic effect, within the meaning of Section 704(b)
38 of the Internal Revenue Code, relating to determination of
39 distributive share.

(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.

(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, relating to low-income housing credit, apply to this section.

(E) (i) Except as described in clause ~~(ii)~~, (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, relating to increase in credit for buildings in high-cost areas, 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, relating to low-income housing credit, 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 Committee, even if the taxpayer receives federal credits pursuant

to Section 42(d)(5)(B) of the Internal Revenue Code, relating to increase in credit for buildings in high-cost areas, provided that the credit allowed under this section shall not exceed 30 percent of the eligible basis of the building.

(iii) Notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit pursuant to paragraph (5) of subdivision (c) even if the taxpayer receives federal credits, 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, relating to increase in credit for buildings in high-cost areas, 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, relating to low-income housing credit, 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, relating to applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings, shall be modified as follows:

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

(2) 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, relating to temporary minimum credit rate for nonfederally subsidized new buildings, in lieu of the percentage prescribed in Section 42(b)(1)(A) 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, relating to low-income housing
36 credit.

37 (B) The restrictions on rent and income levels will terminate or
38 the federally insured mortgage on the property is eligible for
39 prepayment any time within five years before or after the date of
40 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, relating to rehabilitation expenditures
7 treated as separate new building, except that the provisions of
8 Section 42(e)(3)(A)(ii)(I) shall not apply.

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

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

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

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

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

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

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

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

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

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

10 (e) The provisions of Section 42(f) of the Internal Revenue
11 Code, relating to definition and special rules relating to credit
12 period, shall be modified as follows:

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

17 (2) The special rule for the first taxable year of the credit period
18 under Section 42(f)(2) of the Internal Revenue Code, relating to
19 special rule for 1st year of credit period, shall not apply to the tax
20 credit under this section.

21 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
22 determination of applicable percentage with respect to increases
23 in qualified basis after 1st year of credit period, is modified to
24 read:

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

34 (f) The provisions of Section 42(h) of the Internal Revenue
35 Code, relating to limitation on aggregate credit allowable with
36 respect to projects located in a state, shall be modified as follows:

37 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
38 allocated credit amount to apply to all taxable years ending during
39 or after credit allocation year, does not apply and instead the
40 following provisions apply:

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

6 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
7 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
8 to limitation on aggregate credit allowable with respect to projects
9 located in a state, do not apply to this section.

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

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

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

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

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

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

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

6 (i) Section 42(j) of the Internal Revenue Code, relating to
7 recapture of credit, does not apply and the following shall be
8 substituted in its place:

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

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

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

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

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

30 (5) A provision incorporating the requirements of Section 42
31 of the Internal Revenue Code, relating to low-income housing
32 credit, as modified by this section.

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

38 (7) A requirement that the housing sponsor, as security for the
39 performance of the housing sponsor’s obligations under the
40 regulatory agreement, assign the housing sponsor’s interest in rents

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

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

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

27 (2) The committee shall adopt a qualified allocation plan, as
28 provided in Section 42(m)(1) of the Internal Revenue Code, relating
29 to plans for allocation of credit among projects. In adopting this
30 plan, the committee shall comply with the provisions of Sections
31 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
32 relating to qualified allocation plan and relating to certain selection
33 criteria must be used, respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (k) Section 42(l) of the Internal Revenue Code, relating to
29 certifications and other reports to secretary, shall be modified as
30 follows:

31 The term “secretary” shall be replaced by the term “Franchise
32 Tax Board.”

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

37 (m) A project that received an allocation of a 1989 federal
38 housing credit dollar amount shall be eligible to receive an
39 allocation of a 1990 state housing credit dollar amount, subject to
40 all of the following conditions:

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

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

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

8 (n) The credit period with respect to an allocation of credit in
9 1989 by the California Tax Credit Allocation Committee of which
10 any amount is attributable to unallocated credit from 1987 or 1988
11 shall not begin until after December 31, 1989.

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

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

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

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

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

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

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

39 (r) (1) For a project that receives a preliminary reservation
40 under this section beginning on or after January 1, 2016, and before

1 January 1, 2020, a taxpayer may make an irrevocable election in
2 its application to the California Tax Credit Allocation Committee
3 to sell all or any portion of any credit allowed under this section
4 to one or more unrelated parties for each taxable year in which the
5 credit is allowed subject to both of the following conditions:

6 (A) The credit is sold for consideration that is not less than 80
7 percent of the amount of the credit.

8 (B) (i) The unrelated party or parties purchasing any or all of
9 the credit pursuant to this subdivision is a taxpayer allowed the
10 credit under this section for the taxable year of the purchase or any
11 prior taxable year or is a taxpayer allowed the federal credit under
12 Section 42 of the Internal Revenue Code, relating to low-income
13 housing credit, for the taxable year of the purchase or any prior
14 taxable year in connection with any project located in this state.

15 (ii) For purposes of this subparagraph, “taxpayer allowed the
16 credit under this section” means a taxpayer that is allowed the
17 credit under this section without regard to the purchase of a credit
18 pursuant to this subdivision without regard to any of the following:

19 (I) The purchase of a credit under this section pursuant to this
20 subdivision.

21 (II) The assignment of a credit under this section pursuant to
22 subdivision (q).

23 (III) The assignment of a credit under this section pursuant to
24 Section 23363.

25 (2) (A) The taxpayer that originally received the credit shall
26 report to the California Tax Credit Allocation Committee within
27 10 days of the sale of the credit, in the form and manner specified
28 by the California Tax Credit Allocation Committee, all required
29 information regarding the purchase and sale of the credit, including
30 the social security or other taxpayer identification number of the
31 unrelated party or parties to whom the credit has been sold, the
32 face amount of the credit sold, and the amount of consideration
33 received by the taxpayer for the sale of the credit.

34 (B) The California Tax Credit Allocation Committee shall
35 provide an annual listing to the Franchise Tax Board, in a form
36 and manner agreed upon by the California Tax Credit Allocation
37 Committee and the Franchise Tax Board, of the taxpayers that
38 have sold or purchased a credit pursuant to this subdivision.

39 (3) (A) A credit may be sold pursuant to this subdivision to
40 more than one unrelated party.

1 (B) (i) Except as provided in clause (ii), a credit shall not be
2 resold by the unrelated party to another taxpayer or other party.

3 (ii) All or any portion of any credit allowed under this section
4 may be resold once by an original purchaser to one or more
5 unrelated parties, subject to all of the requirements of this
6 subdivision.

7 (4) Notwithstanding any other law, the taxpayer that originally
8 received the credit that is sold pursuant to paragraph (1) shall
9 remain solely liable for all obligations and liabilities imposed on
10 the taxpayer by this section with respect to the credit, none of
11 which shall apply to a party to whom the credit has been sold or
12 subsequently transferred. Parties that purchase credits pursuant to
13 paragraph (1) shall be entitled to utilize the purchased credits in
14 the same manner in which the taxpayer that originally received
15 the credit could utilize them.

16 (5) A taxpayer shall not sell a credit allowed by this section if
17 the taxpayer was allowed the credit on any tax return of the
18 taxpayer.

19 (6) Notwithstanding paragraph (1), the taxpayer, with the
20 approval of the Executive Director of the California Tax Credit
21 Allocation Committee, may rescind the election to sell all or any
22 portion of the credit allowed under this section if the consideration
23 for the credit falls below 80 percent of the amount of the credit
24 after the California Tax Credit Allocation Committee reservation.

25 (s) The California Tax Credit Allocation Committee may
26 prescribe rules, guidelines, or procedures necessary or appropriate
27 to carry out the purposes of this section, including any guidelines
28 regarding the allocation of the credit allowed under this section.
29 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
30 3 of Title 2 of the Government Code shall not apply to any rule,
31 guideline, or procedure prescribed by the California Tax Credit
32 Allocation Committee pursuant to this section.

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

35 (u) This section shall remain in effect on and after December
36 1, 1990, for as long as Section 42 of the Internal Revenue Code,
37 relating to low-income housing credit, remains in effect.

38 (v) The amendments to this section made by Chapter 1222 of
39 the Statutes of 1993 shall apply only to taxable years beginning
40 on or after January 1, 1994, except that paragraph (1) of subdivision

1 (q), as amended, shall apply to taxable years beginning on or after
2 January 1, 1993.
3 SEC. 5. This act provides for a tax levy within the meaning of
4 Article IV of the California Constitution and shall go into
5 immediate effect.

O