

AMENDED IN SENATE SEPTEMBER 4, 2009

AMENDED IN SENATE AUGUST 19, 2009

AMENDED IN SENATE JUNE 30, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1554

Introduced by Committee on Jobs, Economic Development, and the Economy (V. Manuel Perez (Chair), Logue (Vice Chair), Beall, Bill Berryhill, Block, Huber, and Salas)

March 11, 2009

~~An act to amend Sections 7076.1 and 7085.1 of, and to repeal Section 7085 of, the Government Code, relating to economic development. An act to amend Sections 12206, 17058, and 23610.5 of, and to add Sections 17053.15 and 23608.4 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1554, as amended, Committee on Jobs, Economic Development, and the Economy. ~~Economic development: omnibus bill. Low-income housing tax credit.~~

Existing law establishes a low-income housing tax credit program, administered by the California Tax Credit Allocation Committee, which provides procedures and requirements for the allocation of state tax credit amounts among low-income housing projects based on federal law. Existing law, among other things, provides for the recapture for noncompliance, in a specified amount, of tax credits previously granted with respect to the costs of constructing or rehabilitating farmworker housing.

This bill would, in the case of the credit applicable to farmworker housing, modify the recapture amount, as provided. This bill would also require recapture of credit for low-income housing in conformity with federal law, as provided.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law requires the Department of Housing and Community Development to submit a report to the Legislature every 5 years evaluating specified effects of enterprise zones.~~

~~This bill would repeal, recast, and make technical changes to these provisions:~~

~~Existing law requires a geographically targeted economic development area (G-TEDA) to report to the Department of Housing and Community Development every 2 years on progress made toward its existing goals and objectives and plans for the following 2-year period. Existing law also requires that a copy of this biennial report be submitted to the legislative bodies of the local jurisdictions comprising the G-TEDA for review.~~

~~This bill would delete the requirement that this report be submitted to the legislative bodies of the local jurisdictions comprising the G-TEDA.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
2 of the Internal Revenue Code.

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

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

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

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

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

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

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

25 (ii) The Below-Market-Interest-Rate Program pursuant to
26 Section 221(d)(3) of the National Housing Act, Sections
27 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

30 (iv) Programs for rent supplement assistance pursuant to Section
31 101 of the Housing and Urban Development Act of 1965, Section
32 1701s of Title 12 of the United States Code, as amended.

33 (v) Programs pursuant to Section 515 of the Housing Act of
34 1949, Section 1485 of Title 42 of the United States Code, as
35 amended.

36 (vi) The low-income housing credit program set forth in Section
37 42 of the Internal Revenue Code.

38 (B) The restrictions on rent and income levels will terminate or
39 the federal insured mortgage on the property is eligible for

1 prepayment any time within five years before or after the date of
2 application to the California Tax Credit Allocation Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (g) The aggregate housing credit dollar amount that may be
33 allocated annually by the California Tax Credit Allocation
34 Committee pursuant to this section, Section 17058, and Section
35 23610.5 shall be an amount equal to the sum of all the following:

36 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
37 year, and, for the 2002 calendar year and each calendar year
38 thereafter, seventy million dollars (\$70,000,000) increased by the
39 percentage, if any, by which the Consumer Price Index for the
40 preceding calendar year exceeds the Consumer Price Index for the

1 2001 calendar year. For the purposes of this paragraph, the term
2 “Consumer Price Index” means the last Consumer Price Index for
3 all urban consumers published by the federal Department of Labor.

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

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

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

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

22 (h) ~~The~~ *For purposes of paragraph (2) of subdivision (j), the*
23 term “compliance period” as defined in Section 42(i)(1) of the
24 Internal Revenue Code is modified to mean, with respect to any
25 building, the period of 30 consecutive taxable years beginning
26 with the first taxable year of the credit period with respect thereto.

27 (i) (1) Section 42(j) of the Internal Revenue Code shall ~~not be~~
28 ~~applicable and the provisions in paragraph (2) shall be substituted~~
29 ~~in its place~~ *be applicable. The requirements of paragraph (2) shall*
30 *also apply.*

31 (2) The requirements of this section shall be set forth in a
32 regulatory agreement between the California Tax Credit Allocation
33 Committee and the housing sponsor, which agreement shall be
34 subordinated, when required, to any lien or encumbrance of any
35 banks or other institutional lenders to the project. The regulatory
36 agreement entered into pursuant to subdivision (f) of Section
37 50199.14 of the Health and Safety Code, shall apply, providing
38 the agreement includes all of the following provisions:

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

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

4 (C) 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 (D) A provision that the regulatory agreement shall be deemed
8 a contract enforceable by tenants as third-party beneficiaries thereto
9 and which allows individuals, whether prospective, present, or
10 former 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 (E) A provision incorporating the requirements of Section 42
14 of the Internal Revenue Code as modified by this section.

15 (F) A requirement that the housing sponsor notify the California
16 Tax Credit Allocation Committee or its designee and the local
17 agency that can enforce the regulatory agreement 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 (G) A requirement that the housing sponsor, as security for the
21 performance of the housing sponsor's obligations under the
22 regulatory agreement, assign the housing sponsor's interest in rents
23 that it receives from the project, provided that until there is a
24 default under the regulatory agreement, the housing sponsor is
25 entitled to collect and retain the rents.

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

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

percentage of federal and state low-income housing tax credit ceiling which 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 regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (ii) Projects providing single room occupancy units serving very
24 low income tenants.

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

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

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

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

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

1 The term “secretary” shall be replaced by the term “California
2 Franchise Tax Board.”

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

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

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

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

15 (p) *The amendments made by the act adding this subdivision*
16 *shall apply to preliminary reservations made on or after the*
17 *effective date of that act.*

18 SEC. 2. Section 17053.15 is added to the Revenue and Taxation
19 Code, to read:

20 17053.15. (a) *The compliance period for any farmworker*
21 *housing credit granted or allocated under former Section 10753.14*
22 *shall be 30 years, as set forth in subdivision (h) of Section 17058.*
23 *Notwithstanding the provisions of former Section 17053.14, any*
24 *farmworker housing credit granted or allocated under former*
25 *Section 17053.14 shall be subject to recapture during the recapture*
26 *period. For purposes of this section, “recapture period” means*
27 *the 15 consecutive taxable years beginning with the taxable year*
28 *in which the credit is allowable.*

29 (b) *For purposes of calculating the recapture amount for any*
30 *farmworker housing credit granted or allocated under former*
31 *Section 17053.14, for a disqualifying event described in*
32 *subparagraph (B) of paragraph (2) of subdivision (k) of former*
33 *Section 17053.14, “recapture amount” means an amount*
34 *determined by multiplying the entire amount of the credit*
35 *previously allowed under former Section 17053.34 by a fraction,*
36 *the numerator of which is the number of years remaining in the*
37 *recapture period and the denominator of which is 15.*

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 amount of net tax (as defined in Section 17039) a state low-income
3 housing credit in an amount equal to the amount determined in
4 subdivision (c), computed in accordance with the provisions of
5 Section 42 of the Internal Revenue Code, except as otherwise
6 provided in this section.

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

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

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

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

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

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

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

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

1 2016, the credit shall be allocated to the partners of a partnership
2 owning the project in accordance with the partnership agreement,
3 regardless of how the federal low-income housing tax credit with
4 respect to the project is allocated to the partners, or whether the
5 allocation of the credit under the terms of the agreement has
6 substantial economic effect, within the meaning of Section 704(b)
7 of the Internal Revenue Code.

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

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

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

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

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

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

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

35 (E) For buildings located in designated difficult development
36 areas or qualified census tracts as defined in Section 42(d)(5)(C)
37 of the Internal Revenue Code, credits may be allocated under this
38 section in the amounts prescribed in subdivision (c), provided that
39 the amount of credit allocated under Section 42 of the Internal

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

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

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

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

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

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

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

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

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

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

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

36 (i) New construction, substantial rehabilitation, moderate
37 rehabilitation, property disposition, and loan management set-aside
38 programs, or any other program providing project-based assistance
39 pursuant to Section 8 of the United States Housing Act of 1937,
40 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 1715l(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 (d) The term “qualified low-income housing project” as defined
27 in Section 42(c)(2) of the Internal Revenue Code is modified by
28 adding the following requirements:

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

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

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

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

38 (B) The amount of the cashflow from those units in the building
39 that are not low-income units. For purposes of computing cashflow
40 under this subparagraph, operating costs shall be allocated to the

1 low-income units using the “floor space fraction,” as defined in
2 Section 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

39 The total amount for the four-year period of the housing credit
40 dollars allocated in a calendar year to any building shall reduce

1 the aggregate housing credit dollar amount of the California Tax
2 Credit Allocation Committee for the calendar year in which the
3 allocation is made.

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

7 (g) The aggregate housing credit dollar amount which may be
8 allocated annually by the California Tax Credit Allocation
9 Committee pursuant to this section, Section 12206, and Section
10 23610.5 shall be an amount equal to the sum of all the following:

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

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

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

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

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

37 (h) ~~The~~ *For purposes of this section other than the application*
38 *of Section 42(j) of the Internal Revenue Code, the term “compliance*
39 *period” as defined in Section 42(i)(1) of the Internal Revenue Code*
40 *is modified to mean, with respect to any building, the period of 30*

1 consecutive taxable years beginning with the first taxable year of
2 the credit period with respect thereto.

3 (i) Section 42(j) of the Internal Revenue Code shall ~~not be~~
4 ~~applicable and the following requirements be applicable. The~~
5 ~~following requirement shall also apply: of~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (m) A project that received an allocation of a 1989 federal
20 housing credit dollar amount shall be eligible to receive an
21 allocation of a 1990 state housing credit dollar amount, subject to
22 all of the following conditions:

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

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

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

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

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

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

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

1 This section shall remain in effect on and after December 1,
2 1990, for as long as Section 42 of the Internal Revenue Code,
3 relating to low-income housing credits, remains in effect.

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

7 (s) *The amendments made by the act adding this subdivision*
8 *shall apply to preliminary reservations made on or after the*
9 *effective date of that act.*

10 SEC. 4. Section 23608.4 is added to the Revenue and Taxation
11 Code, to read:

12 23608.4. (a) *The compliance period for any farmworker*
13 *housing credit granted or allocated under former Section 23608.2*
14 *shall be 30 years, as set forth in subdivision (h) of Section 17058.*
15 *Notwithstanding the provisions of former Section 23608.2, any*
16 *farmworker housing credit granted or allocated under former*
17 *Section 23608.2 shall be subject to recapture during the recapture*
18 *period. For purposes of this section, "recapture period" means*
19 *the 15 consecutive taxable years beginning with the taxable year*
20 *in which the credit is allowable.*

21 (b) *For purposes of calculating the recapture amount for any*
22 *farmworker housing credit granted or allocated under former*
23 *Section 23608.2, for a disqualifying event described in*
24 *subparagraph (B) of paragraph (2) of subdivision (k) of former*
25 *Section 23608.2, "recapture amount" means an amount determined*
26 *by multiplying the entire amount of the credit previously allowed*
27 *under former Section 23608.2 by a fraction, the numerator of*
28 *which is the number of years remaining in the recapture period*
29 *and the denominator of which is 15.*

30 SEC. 5. Section 23610.5 of the Revenue and Taxation Code is
31 amended to read:

32 23610.5. (a) (1) There shall be allowed as a credit against the
33 "tax" (as defined by Section 23036) a state low-income housing
34 tax credit in an amount equal to the amount determined in
35 subdivision (c), computed in accordance with Section 42 of the
36 Internal Revenue Code of 1986, except as otherwise provided in
37 this section.

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

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

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

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

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

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

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

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

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

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

(iii) This subparagraph shall 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 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 shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) 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.

(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

1 3 percent for the fourth year for new buildings (whether or not the
2 building is federally subsidized) and for existing buildings.

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

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

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

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

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

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

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

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

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

33 (ii) The Below-Market-Interest-Rate Program pursuant to
34 Section 221(d)(3) of the National Housing Act, Sections
35 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

38 (iv) Programs for rent supplement assistance pursuant to Section
39 101 of the Housing and Urban Development Act of 1965, Section
40 1701s of Title 12 of the United States Code, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) The limitation on return shall apply 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.

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

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

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

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

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

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

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

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

37 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
38 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
39 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 12206, and Section 17058 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~~ For purposes of this section other than the application of Section 42(j) of the Internal Revenue Code, 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 shall ~~not be applicable and the following shall be substituted in its place be applicable.~~ The following requirement shall also apply:

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

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

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

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

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

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

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

28 (7) 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 (8) 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 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. In
19 adopting this plan, the committee shall comply with the provisions
20 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
21 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(t) The amendments made by the act adding this subdivision shall apply to preliminary reservations made on or after the effective date of that act.

SEC. 6. *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within*

1 *the meaning of Article IV of the Constitution and shall go into*
2 *immediate effect. The facts constituting the necessity are:*
3 *In order to meet critical deadlines relating to the provision of*
4 *low-income housing, it is necessary that this act go into immediate*
5 *effect.*

6
7
8 **All matter omitted in this version of the bill**
9 **appears in the bill as amended in Senate,**
10 **August 19, 2009 (JR11)**
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