

AMENDED IN SENATE DECEMBER 16, 2009

AMENDED IN SENATE FEBRUARY 11, 2009

AMENDED IN SENATE JANUARY 8, 2009

SENATE BILL

No. 16

**Introduced by Senator Lowenthal
(Coauthor: Senator Alquist)**

December 1, 2008

~~An act to amend Section 19611 of, and to add Sections 12206.5, 17058.5, 17058.6, 23610.6, and 23610.8 to, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 12206, 17058, 19611, and 23610.5 of, and to add Sections 17058.6 and 23610.6 to, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 16, as amended, Lowenthal. Low-income housing tax credits.

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, income, and corporation tax credit amounts among low-income housing projects based on federal law.

This bill would, for calendar years 2010 to 2013, inclusive, increase the aggregate housing credit dollar amount that may be allocated among low-income housing projects, as specified. This bill would, in the case of a project that receives a preliminary reservation of a state low-income housing tax credit on or after January 1, 2010, and before January 1,

2013, allow the income and corporation tax credit to be refundable pursuant to specified laws, and would make an appropriation therefor, as provided. This bill would also authorize the California Tax Credit Allocation Committee to require a fee to cover the costs incurred by the committee and the Franchise Tax Board to make these refunds.

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

~~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.~~

~~This bill would, in the case of a project that has received or receives preliminary reservation of state low-income housing tax credit on or after July 1, 2008, and before January 1, 2011, allow the credit to be refundable pursuant to specified laws, and make an appropriation therefor, as provided.~~

~~Existing law, in the case of a partnership, requires the allocation of the state low-income housing tax credits, on or after January 1, 2009, and before January 1, 2016, to partners based upon the partnership agreement, regardless of how the federal low-income housing tax credit, as provided, is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, as specified.~~

~~This bill would extend those requirements to a project that receives a preliminary reservation of the state low-income housing tax credit during calendar year 2008, as specified.~~

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

Vote: $\frac{2}{3}$. Appropriation: yes. 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

Internal Revenue Code, except as otherwise provided in this section.

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

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

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

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

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

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

(B) ~~The (i)~~ *Except as provided in clause (ii), the California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.*

(ii) For applications submitted in calendar years 2010 to 2012, inclusive, the committee may require a fee to cover the costs incurred by the committee and the Franchise Tax Board to administer Sections 17058.6 and 23610.6.

(C) (i) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to

subdivision (a), on or after January 1, 2009, and before January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(ii) 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.

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

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

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to Section 42(d)(5)(C) of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed

1 without regard to Section 42(d)(5)(C) of the Internal Revenue
2 Code.

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 that receives
6 an allocation after 1989 and is a new building not federally
7 subsidized, the term “applicable percentage” means the following:

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

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

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

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

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

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

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

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

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

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

1 (iv) Programs for rent supplement assistance pursuant to Section
2 101 of the Housing and Urban Development Act of 1965, Section
3 1701s of Title 12 of the United States Code, as amended.

4 (v) Programs pursuant to Section 515 of the Housing Act of
5 1949, Section 1485 of Title 42 of the United States Code, as
6 amended.

7 (vi) The low-income housing credit program set forth in Section
8 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

38 (C) Any amount allowed to be distributed under subparagraph
39 (A) that is not available for distribution during the first five years
40 of the compliance period may accumulate and be distributed any

1 time during the first 15 years of the compliance period but not
2 thereafter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

(6) *For calendar years 2010 to 2013, inclusive, in lieu of the amounts prescribed in paragraphs (1) to (3), inclusive, the following amounts shall apply:*

(A) *For calendar year 2010, ninety-two million nine hundred thousand dollars (\$92,900,000).*

(B) *For calendar year 2011, one hundred million eight hundred thousand dollars (\$100,800,000).*

1 (C) For calendar year 2012, ninety-two million two hundred
2 thousand dollars (\$92,200,000).

3 (D) For calendar year 2013, the sum of all of the following:

4 (i) The amount prescribed in paragraph (1) for that calendar
5 year.

6 (ii) The total difference between the amounts prescribed in
7 paragraph (1) for calendar years 2010, 2011, and 2012, and the
8 amounts prescribed by subparagraphs (A), (B), and (C) for those
9 calendar years.

10 (iii) The amount of unused housing credit ceiling for calendar
11 years 2010 to 2012, inclusive.

12 (iv) The amount of housing credit ceiling for calendar years
13 2010 to 2012, inclusive, returned in the calendar year, as
14 determined in accordance with paragraph (2).

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

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

22 (2) The requirements of this section shall be set forth in a
23 regulatory agreement between the California Tax Credit Allocation
24 Committee and the housing sponsor, which agreement shall be
25 subordinated, when required, to any lien or encumbrance of any
26 banks or other institutional lenders to the project. The regulatory
27 agreement entered into pursuant to subdivision (f) of Section
28 50199.14 of the Health and Safety Code, shall apply, providing
29 the agreement includes all of the following provisions:

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

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

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

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

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

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

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

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

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

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

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

1 adopting this plan, the committee shall comply with the provisions
2 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
3 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 *SEC. 2. Section 17058 of the Revenue and Taxation Code is*
7 *amended to read:*

8 17058. (a) (1) There shall be allowed as a credit against the
9 amount of net tax (as defined in Section 17039) a state low-income
10 housing credit in an amount equal to the amount determined in
11 subdivision (c), computed in accordance with the provisions of
12 Section 42 of the Internal Revenue Code, except as otherwise
13 provided in this section.

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

17 (3) "Housing sponsor" for purposes of this section means the
18 sole owner in the case of an individual, the partnership in the case
19 of a partnership, and the "S" corporation in the case of an "S"
20 corporation.

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

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

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

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

38 (B) ~~The (i)~~ *Except as provided in clause (ii), the* California Tax
39 Credit Allocation Committee shall not require fees for the credit
40 under this section in addition to those fees required for applications

1 for the tax credit pursuant to Section 42 of the Internal Revenue
2 Code. The committee may require a fee if the application for the
3 credit under this section is submitted in a calendar year after the
4 year the application is submitted for the federal tax credit.

5 *(ii) For applications submitted in calendar years 2010 to 2012,*
6 *inclusive, the committee may require a fee to cover the costs*
7 *incurred by the committee and the Franchise Tax Board to*
8 *administer Sections 17058.6 and 23610.6.*

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

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

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

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

36 (2) (A) The California Tax Credit Allocation Committee shall
37 certify to the housing sponsor the amount of tax credit under this
38 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 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)(A) of the Internal Revenue Code.

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

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

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

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

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

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

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

14 (ii) The Below-Market-Interest-Rate Program pursuant to
15 Section 221(d)(3) of the National Housing Act, Sections
16 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

19 (iv) Programs for rent supplement assistance pursuant to Section
20 101 of the Housing and Urban Development Act of 1965, Section
21 1701s of Title 12 of the United States Code, as amended.

22 (v) Programs pursuant to Section 515 of the Housing Act of
23 1949, Section 1485 of Title 42 of the United States Code, as
24 amended.

25 (vi) The low-income housing credit program set forth in Section
26 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (g) The aggregate housing credit dollar amount which may be
23 allocated annually by the California Tax Credit Allocation
24 Committee pursuant to this section, Section 12206, and Section
25 23610.5 shall be an amount equal to the sum of all the following:

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

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

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

(6) *For calendar years 2010 to 2013, inclusive, in lieu of the amounts prescribed in paragraphs (1) to (3), inclusive, the following amounts shall apply:*

(A) *For calendar year 2010, ninety-two million nine hundred thousand dollars (\$92,900,000).*

(B) *For calendar year 2011, one hundred million eight hundred thousand dollars (\$100,800,000).*

(C) *For calendar year 2012, ninety-two million two hundred thousand dollars (\$92,200,000).*

(D) *For calendar year 2013, the sum of all of the following:*

(i) *The amount prescribed in paragraph (1) for that calendar year.*

(ii) *The total difference between the amounts prescribed in paragraph (1) for calendar years 2010, 2011, and 2012, and the amounts prescribed by subparagraphs (A), (B), and (C) for those calendar years.*

(iii) *The amount of unused housing credit ceiling for calendar years 2010 to 2012, inclusive.*

(iv) *The amount of housing credit ceiling for calendar years 2010 to 2012, inclusive, returned in the calendar year, as determined in accordance with paragraph (2).*

(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 shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which

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

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

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

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

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

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

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

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

32 (8) The remedies available in the event of a default under the
33 regulatory agreement that is not cured within a reasonable cure
34 period, include, but are not limited to, allowing any of the parties
35 designated to enforce the regulatory agreement to collect all rents
36 with respect to the project; taking possession of the project and
37 operating the project in accordance with the regulatory agreement
38 until the enforcer determines the housing sponsor is in a position
39 to operate the project in accordance with the regulatory agreement;
40 applying to any court for specific performance; securing the

1 appointment of a receiver to operate the project; or any other relief
2 as may be appropriate.

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

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

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

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

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

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

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

38 (iv) The housing sponsor shall have and maintain control of the
39 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 is comprised
28 of low-income units with three and more bedrooms.

29 (ii) Projects providing single room occupancy units serving very
30 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.

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

6 The term “secretary” shall be replaced by the term “California
7 Franchise Tax Board.”

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

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

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

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

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

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

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

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

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

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

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

1 SEC. 3. Section 17058.6 is added to the Revenue and Taxation
2 Code, to read:

3 17058.6. (a) (1) If a project receives a preliminary reservation
4 of state low-income housing tax credit under Section 17058 on or
5 after January 1, 2010, and before January 1, 2013, and the
6 application for the credit includes the written irrevocable election
7 of the housing sponsor for the credit for that project to be
8 refundable, then the amount allowable as a credit under Section
9 17058 in excess of the tax liability of the taxpayer for the taxable
10 year shall be credited against other amounts due, if any, and the
11 balance, if any, shall be refunded to the taxpayer.

12 (2) Notwithstanding any other law to the contrary, any amount
13 refundable under this section may not be carried over under
14 subdivision (l) of Section 17058.

15 (3) For purposes of applying paragraph (1), Section 17039 shall
16 be applied by first reducing the “net tax” to the extent allowed
17 under that section by any other credits, and then any remaining
18 “net tax” shall first be offset by the amount described in paragraph
19 (1) and any remaining amount described in paragraph (1) shall
20 then be refunded to the taxpayer.

21 (b) Any credit refunded to a taxpayer pursuant to this section
22 shall not be included in income subject to tax under this part or
23 Part 11 (commencing with Section 23001).

24 (c) The Franchise Tax Board shall not pay refunds authorized
25 by subdivision (a) before January 1, 2011. Refunds may be paid
26 after that date only if both of the following have occurred:

27 (1) An agreement has been executed between the California
28 Tax Credit Allocation Committee and the Franchise Tax Board
29 that provides that an amount equal to all first year costs of the
30 Franchise Tax Board associated with the refund of low-income
31 housing credits authorized by subdivision (a) shall be received by
32 the Franchise Tax Board. For purposes of this paragraph, first
33 year costs of the Franchise Tax Board include, but are not limited
34 to, costs associated with the development of processes or system
35 changes, if necessary, and labor.

36 (2) Pursuant to the agreement specified in paragraph (1), the
37 Franchise Tax Board has received an amount equal to the first
38 year costs specified in paragraph (1).

39 SEC. 4. Section 19611 of the Revenue and Taxation Code is
40 amended to read:

19611. (a) The Tax Relief and Refund Account is hereby created in the General Fund. Notwithstanding Section 13340 of the Government Code, all moneys in the Tax Relief and Refund Account are hereby continuously appropriated, without regard to fiscal year, to the Franchise Tax Board for purposes of making all payments as provided in this section.

(b) Notwithstanding any other provision of law, all payments required to be made to taxpayers or other persons from the Personal Income Tax Fund shall be paid from the Tax Relief and Refund Account.

(c) The Controller shall transfer, as needed, to the Tax Relief and Refund Account:

(1) From the unexpended balance of the annual Budget Act appropriation for Item 9100-101-001, Schedule 80-Renter's Tax Relief, an amount determined by the Franchise Tax Board to be equivalent to the total amount of renters' assistance credits and refunds allowed under Section 17053.5.

(A) If there is no unexpended balance of the appropriation, as provided for in paragraph (1), the Controller shall transfer sufficient moneys from the Personal Income Tax Fund to make the renters' assistance credits and refunds until there is an unexpended balance.

(B) Subsequent to there being no unexpended balance of the appropriation, as provided for in paragraph (1), and there being a transfer of moneys from the Personal Income Tax Fund to make the renters' assistance credits and refunds, reimbursement shall be made from the unexpended balance of the appropriation as provided for in paragraph (1) to the Personal Income Tax Fund. However, if no such appropriation is subsequently made, reimbursement shall be made from the General Fund.

(2) From the ~~disability fund~~ *Disability Fund*, the amount transferable to the General Fund pursuant to subdivision (a) of Section 1176.5 of the Unemployment Insurance Code.

(3) From the Personal Income Tax Fund, such additional amounts as determined by the Franchise Tax Board to be necessary to make the payments required under this section.

(4) *From the Personal Income Tax Fund, those amounts as determined by the Franchise Tax Board to be necessary to make the refunds required under Section 17058.6.*

1 (5) *From the Corporation Income Tax Fund, those amounts as*
2 *determined by the Franchise Tax Board to be necessary to make*
3 *the refunds required under Section 23610.6.*

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

6 23610.5. (a) (1) There shall be allowed as a credit against the
7 “tax” (as defined by Section 23036) a state low-income housing
8 tax credit in an amount equal to the amount determined in
9 subdivision (c), computed in accordance with Section 42 of the
10 Internal Revenue Code of 1986, except as otherwise provided in
11 this section.

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

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

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

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

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

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

37 (B) ~~The (i)~~ *Except as provided in clause (ii), the California Tax*
38 *Credit Allocation Committee shall not require fees for the credit*
39 *under this section in addition to those fees required for applications*
40 *for the tax credit pursuant to Section 42 of the Internal Revenue*

1 Code. The committee may require a fee if the application for the
2 credit under this section is submitted in a calendar year after the
3 year the application is submitted for the federal tax credit.

4 (ii) *For applications submitted in calendar years 2010 to 2012,*
5 *inclusive, the committee may require a fee to cover the costs*
6 *incurred by the committee and the Franchise Tax Board to*
7 *administer Sections 17058.6 and 23610.6.*

8 (C) (i) For a project that receives a preliminary reservation of
9 the state low-income housing tax credit, allowed pursuant to
10 subdivision (a), on or after January 1, 2009, and before January 1,
11 2016, the credit shall be allocated to the partners of a partnership
12 owning the project in accordance with the partnership agreement,
13 regardless of how the federal low-income housing tax credit with
14 respect to the project is allocated to the partners, or whether the
15 allocation of the credit under the terms of the agreement has
16 substantial economic effect, within the meaning of Section 704(b)
17 of the Internal Revenue Code.

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

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

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

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

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

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

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

5 (E) For buildings located in designated difficult development
6 areas or qualified census tracts as defined in Section 42(d)(5)(C)
7 of the Internal Revenue Code, credits may be allocated under this
8 section in the amounts prescribed in subdivision (c), provided that
9 the amount of credit allocated under Section 42 of the Internal
10 Revenue Code is computed on 100 percent of the qualified basis
11 of the building.

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

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

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

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

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

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

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

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

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

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

9 (ii) The Below-Market-Interest-Rate Program pursuant to
10 Section 221(d)(3) of the National Housing Act, Sections
11 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

14 (iv) Programs for rent supplement assistance pursuant to Section
15 101 of the Housing and Urban Development Act of 1965, Section
16 1701s of Title 12 of the United States Code, as amended.

17 (v) Programs pursuant to Section 515 of the Housing Act of
18 1949, Section 1485 of Title 42 of the United States Code, as
19 amended.

20 (vi) The low-income housing credit program set forth in Section
21 42 of the Internal Revenue Code.

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

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

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

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

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

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

1 (i) The owner equity, which shall include the amount of the
2 capital contributions actually paid to the housing sponsor and shall
3 not 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 accumulate and be distributed at
14 any 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 later of the taxable years in which the increase in qualified basis occurs.

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

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

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

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

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

(6) *For calendar years 2010 to 2013, inclusive, in lieu of the amounts prescribed in paragraphs (1) to (3), inclusive, the following amounts shall apply:*

(A) *For calendar year 2010, ninety-two million nine hundred thousand dollars (\$92,900,000).*

(B) *For calendar year 2011, one hundred million eight hundred thousand dollars (\$100,800,000).*

(C) *For calendar year 2012, ninety-two million two hundred thousand dollars (\$92,200,000).*

(D) *For calendar year 2013, the sum of all of the following:*

(i) *The amount prescribed in paragraph (1) for that calendar year.*

(ii) *The total difference between the amounts prescribed in paragraph (1) for calendar years 2010, 2011, and 2012, and the amounts prescribed by subparagraphs (A), (B), and (C) for those calendar years.*

(iii) *The amount of unused housing credit ceiling for calendar years 2010 to 2012, inclusive.*

(iv) *The amount of housing credit ceiling for calendar years 2010 to 2012, inclusive, returned in the calendar year, as determined in accordance with paragraph (2).*

(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 shall not be applicable 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 this 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 (1) A term not less than the compliance period.

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

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

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

14 (5) A provision incorporating the requirements of Section 42
15 of the Internal Revenue Code 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 (7) 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 (8) A provision that the remedies available in the event of a
27 default under the regulatory agreement that is not cured within a
28 reasonable cure period include, but are not limited to, allowing
29 any of the parties designated to enforce the regulatory agreement
30 to collect all rents with respect to the project; taking possession of
31 the project and operating the project in accordance with the
32 regulatory agreement until the enforcer determines the housing
33 sponsor is in a position to operate the project in accordance with
34 the regulatory agreement; applying to any court for specific
35 performance; securing the appointment of a receiver to operate
36 the project; or any other relief 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 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 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 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 that there is a need for low-income housing in the community or region for which it is proposed.

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

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

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

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

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

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

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 and 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 except to break a tie
35 when two or more of the projects have an equal rating.

36 (5) Not less than 20 percent of the low-income housing tax
37 credits available annually under this section, Section 12206, and
38 Section 17058 shall be set aside for allocation to rural areas as
39 defined in Section 50199.21 of the Health and Safety Code. Any
40 amount of credit set aside for rural areas remaining on or after

1 October 31 of any calendar year shall be available for allocation
2 to any eligible project. No amount of credit set aside for rural areas
3 shall be considered available for any eligible project so long as
4 there are eligible rural applications pending on October 31.

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

7 The term “secretary” shall be replaced by the term “California
8 Franchise Tax Board.”

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

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

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

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

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

24 (n) The credit period with respect to an allocation of credit in
25 1989 by the California Tax Credit Allocation Committee of which
26 any amount is attributable to unallocated credit from 1987 or 1988
27 shall not begin until after December 31, 1989.

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

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

33 (q) (1) A corporation may elect to assign any portion of any
34 credit allowed under this section to one or more affiliated
35 corporations for each taxable year in which the credit is allowed.
36 For purposes of this subdivision, “affiliated corporation” has the
37 meaning provided in subdivision (b) of Section 25110, as that
38 section was amended by Chapter 881 of the Statutes of 1993, as
39 of the last day of the taxable year in which the credit is allowed,
40 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.

SEC. 6. Section 23610.6 is added to the Revenue and Taxation Code, to read:

23610.6. (a) (1) If a project receives a preliminary reservation of state low-income housing tax credit under Section 23610.5 on or after January 1, 2010, and before January 1, 2013, and the application for the credit includes the written irrevocable election of the housing sponsor for the credit for that project to be refundable, then the amount allowable as a credit under Section 23610.5 in excess of the tax liability of the taxpayer for the taxable year shall be credited against other amounts due, if any, and the balance, if any, shall be refunded to the taxpayer.

(2) Notwithstanding any other law to the contrary, any amount refundable under this section may not be carried over under subdivision (l) of Section 23610.5.

(3) For purposes of applying paragraph (1), Section 23036 shall be applied by first reducing the “tax” to the extent allowed under

1 that section by any other credits, and then any remaining “tax”
2 shall first be offset by the amount described in paragraph (1) and
3 any remaining amount described in paragraph (1) shall then be
4 refunded to the taxpayer.

5 (b) Notwithstanding any other law to the contrary, credits for
6 a project referred to in paragraph (1) of subdivision (a) may not
7 be assigned pursuant to Section 23663.

8 (c) Any credit refunded to a taxpayer pursuant to this section
9 shall not be included in income subject to tax under this part or
10 Part 10 (commencing with Section 17001).

11 (d) The Franchise Tax Board shall not pay refunds authorized
12 by subdivision (a) before January 1, 2011. Refunds may be paid
13 after that date only if both of the following have occurred:

14 (1) An agreement has been executed between the California
15 Tax Credit Allocation Committee and the Franchise Tax Board
16 that provides that an amount equal to all first year costs of the
17 Franchise Tax Board associated with the refund of low-income
18 housing credits authorized by subdivision (a) shall be received by
19 the Franchise Tax Board. For purposes of this paragraph, first
20 year costs of the Franchise Tax Board include, but are not limited
21 to, costs associated with the development of processes or system
22 changes, if necessary, and labor.

23 (2) Pursuant to the agreement specified in paragraph (1), the
24 Franchise Tax Board has received an amount equal to the first
25 year costs specified in paragraph (1).

26 SEC. 7. This act is an urgency statute necessary for the
27 immediate preservation of the public peace, health, or safety within
28 the meaning of Article IV of the Constitution and shall go into
29 immediate effect. The facts constituting the necessity are:

30 The state low-income housing tax credit is a critical source of
31 funding for the development of affordable rental housing. Because
32 of the financial downturn and the disruption to global capital
33 markets, the ability of affordable housing developers, who have
34 been awarded credits, to obtain private equity investment in return
35 for the credits, has decreased precipitously and, in some cases,
36 disappeared altogether. Some developers have been forced to
37 return tax credit awards unused, others are struggling to arrange
38 investors, and those projects that have found investors have had
39 to seek additional public funding to offset the decline in pricing
40 and to maintain the financial feasibility of projects, severely

1 *jeopardizing the state's goal of providing decent, safe, and sanitary*
2 *housing for all Californians. An immediate and short-term change*
3 *to make state low-income housing tax credits refundable will entice*
4 *investors back into affordable housing until global financial*
5 *markets stabilize.*

6
7
8 **All matter omitted in this version of the bill**
9 **appears in the bill as amended in the**
10 **Senate, February 11, 2009.(JR11)**
11