

Introduced by Committee on Transportation and Housing (Senators Lowenthal (Chair), Ashburn, DeSaulnier, Harman, Hollingsworth, Huff, Kehoe, Oropeza, Pavley, Simitian, and Wolk)

February 24, 2009

An act to amend Section 66412 of, and to repeal Section 65584.6 of, the Government Code, to amend Section 18031.7 of the Health and Safety Code, and to amend Sections 3692.4, 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 251, as introduced, Committee on Transportation and Housing. Housing and Community Development: housing omnibus bill.

(1) Existing law exempts from the requirements of the Subdivision Map Act specified types of property, including the conversion of a community apartment project, and the conversion of a stock cooperative, unless a parcel or final map was approved by the legislative body of a local agency, if specified requirements are met.

This bill would modify the requirements for an exemption relating to the conversion of a community apartment project and stock cooperative.

(2) Existing law requires all fuel-gas-burning water heater appliances in new manufactured homes or new multifamily manufactured homes installed in the state to be seismically braced, anchored, or strapped. In the event of a sale of a home, the homeowner or contractor responsible for the installation of the home is required to ensure all fuel-gas-burning water heater appliances are seismically braced, anchored, or strapped, consistent with existing law. The requirement is satisfied when the

homeowner or responsible contractor both completes that work and signs a declaration stating each fuel-gas-burning water heater is secured.

This bill would instead provide that the requirement is satisfied when the homeowner or responsible contractor both determines that work is complete and signs the declaration.

(3) This bill would delete obsolete provisions, correct erroneous cross-references, and make various other, technical changes in existing law relating to housing.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65584.6 of the Government Code is
2 repealed.

3 ~~65584.6. (a) The County of Napa may, during its current~~
4 ~~housing element planning period, identified in Section 65588, meet~~
5 ~~up to 15 percent of its existing share of the regional housing need~~
6 ~~for lower income households, as defined in Section 65584, by~~
7 ~~committing funds for the purpose of constructing affordable~~
8 ~~housing units, and constructing those units in one or more cities~~
9 ~~within the county, only after all of the following conditions are~~
10 ~~met:~~

11 ~~(1) An agreement has been executed between the county and~~
12 ~~the receiving city or cities, following a public hearing held by the~~
13 ~~county and the receiving city or cities to solicit public comments~~
14 ~~on the draft agreement. The agreement shall contain information~~
15 ~~sufficient to demonstrate that the county and city or cities have~~
16 ~~complied with the requirements of this section and shall also~~
17 ~~include the following:~~

18 ~~(A) A plan and schedule for timely construction of dwelling~~
19 ~~units.~~

20 ~~(B) Site identification by street address for the units to be~~
21 ~~developed.~~

22 ~~(C) A statement either that the sites upon which the units will~~
23 ~~be developed were identified in the receiving city's housing~~
24 ~~element as potential sites for the development of housing for~~
25 ~~lower-income households, or that the units will be developed on~~
26 ~~previously unidentified sites.~~

1 ~~(D) The number and percentage of the county's lower-income~~
2 ~~housing needs previously transferred, for the appropriate planning~~
3 ~~period, pursuant to this section.~~

4 ~~(2) The council of governments that assigned the county's share~~
5 ~~receives and approves each proposed agreement to meet a portion~~
6 ~~of the county's fair share housing allocation within one or more~~
7 ~~of the cities within the county after taking into consideration the~~
8 ~~criteria of subdivision (a) of Section 65584. If the council of~~
9 ~~governments fails to take action to approve or disapprove an~~
10 ~~agreement between the county and the receiving city or cities~~
11 ~~within 45 days following the receipt of the agreement, the~~
12 ~~agreement shall be deemed approved.~~

13 ~~(3) The city or cities in which the units are developed agree not~~
14 ~~to count the units towards their share of the region's affordable~~
15 ~~housing need.~~

16 ~~(4) The county and the receiving city or cities, based on~~
17 ~~substantial evidence on the record, make the following findings:~~

18 ~~(A) Adequate sites with appropriate zoning exist in the receiving~~
19 ~~city or cities to accommodate the units to be developed pursuant~~
20 ~~to this section. The agreement shall demonstrate that the city or~~
21 ~~cities have identified sufficient vacant or underutilized or vacant~~
22 ~~and underutilized sites in their housing elements to meet their~~
23 ~~existing share of regional housing need, as allocated by the council~~
24 ~~of governments pursuant to subdivision (a) of Section 65584, in~~
25 ~~addition to the sites needed to construct the units pursuant to this~~
26 ~~section.~~

27 ~~(B) If needed, additional subsidy or financing for the~~
28 ~~construction of the units is available.~~

29 ~~(C) The receiving city or cities have housing elements that have~~
30 ~~been found by the Department of Housing and Community~~
31 ~~Development to be in compliance with this article.~~

32 ~~(5) If the sites upon which units are to be developed pursuant~~
33 ~~to this section were previously identified in the receiving city's~~
34 ~~housing element as potential sites for the development of housing~~
35 ~~sufficient to accommodate the receiving city's share of the lower~~
36 ~~income household need identified in its housing element, then the~~
37 ~~receiving city shall have amended its housing element to identify~~
38 ~~replacement sites by street address for housing for lower-income~~
39 ~~households. Additionally, the Department of Housing and~~
40 ~~Community Development shall have received and reviewed the~~

1 amendment and found that the city's housing element continues
2 to comply with this article.

3 ~~(6) The county and receiving city or cities shall have completed,~~
4 ~~and provided to the department, the annual report required by~~
5 ~~subdivision (b) of Section 65400.~~

6 ~~(7) For a period of five years after a transfer occurs, the report~~
7 ~~required by subdivision (b) of Section 65400 shall include~~
8 ~~information on the status of transferred units, implementation of~~
9 ~~the terms and conditions of the transfer agreement, and information~~
10 ~~on any dwelling units actually constructed, including the number,~~
11 ~~type, location, and affordability requirements.~~

12 ~~(8) The receiving city demonstrates that it has met, in the current~~
13 ~~or previous housing element cycle, at least 20 percent of its share~~
14 ~~of the regional need for housing for very low-income households~~
15 ~~allocated to the city pursuant to Section 65584.~~

16 ~~(b) The credit that the county receives pursuant to this section~~
17 ~~shall not exceed 40 percent of the number of units that are~~
18 ~~affordable to lower income households and constructed and~~
19 ~~occupied during the same housing element cycle in unincorporated~~
20 ~~areas of the county. The county shall only receive the credit after~~
21 ~~the units have been constructed and occupied. Within 60 days of~~
22 ~~issuance of a certificate of occupancy for the units, the county shall~~
23 ~~inform the council of governments and the department in writing~~
24 ~~that a certificate of occupancy has been issued.~~

25 ~~(c) Concurrent with the review by the council of governments~~
26 ~~prescribed by this section, the Department of Housing and~~
27 ~~Community Development shall evaluate the agreement to~~
28 ~~determine whether the city or cities are in substantial compliance~~
29 ~~with this section. The department shall report the results of its~~
30 ~~evaluation to the county and city or cities for inclusion in their~~
31 ~~record of compliance with this section.~~

32 ~~(d) If at the end of the five-year period identified in subdivision~~
33 ~~(c) of Section 65583, any percentage of the regional share~~
34 ~~allocation has not been constructed as provided pursuant to~~
35 ~~subdivision (a), or, after consultation with the department, the~~
36 ~~council of governments determines that the requirements of~~
37 ~~paragraphs (5) and (7) of subdivision (a) have not been~~
38 ~~substantially complied with, the council of governments shall add~~
39 ~~the unbuilt units to Napa County's regional share allocation for~~

1 ~~the planning period of the next periodic update of the housing~~
2 ~~element.~~

3 ~~(e) Napa County shall not meet a percentage of its share of the~~
4 ~~regional share pursuant to subdivision (a) on or after June 30,~~
5 ~~2007, unless a later enacted statute, that is enacted before June 30,~~
6 ~~2007, deletes or extends that date.~~

7 SEC. 2. Section 66412 of the Government Code is amended
8 to read:

9 66412. This division shall be inapplicable to any of the
10 following:

11 (a) The financing or leasing of apartments, offices, stores, or
12 similar space within apartment buildings, industrial buildings,
13 commercial buildings, mobilehome parks, or trailer parks.

14 (b) Mineral, oil, or gas leases.

15 (c) Land dedicated for cemetery purposes under the Health and
16 Safety Code.

17 (d) A lot line adjustment between four or fewer existing
18 adjoining parcels, where the land taken from one parcel is added
19 to an adjoining parcel, and where a greater number of parcels than
20 originally existed is not thereby created, if the lot line adjustment
21 is approved by the local agency, or advisory agency. A local agency
22 or advisory agency shall limit its review and approval to a
23 determination of whether or not the parcels resulting from the lot
24 line adjustment will conform to the local general plan, any
25 applicable specific plan, any applicable coastal plan, and zoning
26 and building ordinances. An advisory agency or local agency shall
27 not impose conditions or exactions on its approval of a lot line
28 adjustment except to conform to the local general plan, any
29 applicable specific plan, any applicable coastal plan, and zoning
30 and building ordinances, to require the prepayment of real property
31 taxes prior to the approval of the lot line adjustment, or to facilitate
32 the relocation of existing utilities, infrastructure, or easements. No
33 tentative map, parcel map, or final map shall be required as a
34 condition to the approval of a lot line adjustment. The lot line
35 adjustment shall be reflected in a deed, which shall be recorded.
36 No record of survey shall be required for a lot line adjustment
37 unless required by Section 8762 of the Business and Professions
38 Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

~~(g) Unless a parcel or final map was approved by the legislative body of a local agency, the~~ The conversion of a community apartment project, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

~~(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.~~

~~(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.~~

~~(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.~~

~~(4)~~

(1) The property was subdivided before January 1, 1982, as evidenced by a recorded deed creating the community apartment project.

(2) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the project shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the project.

(3) If subdivision, as defined in Section 66424, of the property occurred after January 1, 1964, both of the following requirements are met:

(A) A final or parcel map of that subdivision was approved by the local agency and recorded, with all of the conditions of that map remaining in effect after the conversion.

1 (B) No more than 49 percent of the units in the project were
2 owned by any one person as defined in Section 17, including an
3 incorporator or director of the community apartment project, on
4 January 1, 1982.

5 (4) The local agency certifies that the above requirements were
6 satisfied if the local agency, by ordinance, provides for that
7 certification.

8 (h) ~~Unless a parcel or final map was approved by the legislative~~
9 ~~body of a local agency, the~~ The conversion of a stock cooperative,
10 as defined in Section 1351 of the Civil Code, to a condominium,
11 as defined in Section 783 of the Civil Code, but only if all of the
12 following requirements are met:

13 ~~(1) At least 51 percent of the units in the cooperative were~~
14 ~~occupied by stockholders of the cooperative on January 1, 1981,~~
15 ~~or individually owned by stockholders of the cooperative on~~
16 ~~January 1, 1981. As used in this paragraph, a cooperative unit is~~
17 ~~“individually owned” if and only if the stockholder of that unit~~
18 ~~owns or partially owns an interest in no more than one unit in the~~
19 ~~cooperative.~~

20 ~~(2) No more than 25 percent of the shares of the cooperative~~
21 ~~were owned by any one person, as defined in Section 17, including~~
22 ~~an incorporator or director of the cooperative, on January 1, 1981.~~

23 ~~(3)~~
24 (1) The property was subdivided before January 1, 1982, as
25 evidenced by a recorded deed creating the stock cooperative, an
26 assignment of lease, or issuance of shares to a stockholder.

27 (2) A person renting a unit in a cooperative shall be entitled at
28 the time of conversion to all tenant rights in state or local law,
29 including, but not limited to, rights respecting first refusal, notice,
30 and displacement and relocation benefits.

31 ~~(4) The local agency certifies that the above requirements were~~
32 ~~satisfied if the local agency, by ordinance, provides for that~~
33 ~~certification.~~

34 ~~(5)~~
35 (3) Subject to compliance with subdivision (e) of Section 1351
36 of the Civil Code, all conveyances and other documents necessary
37 to effectuate the conversion shall be executed by the required
38 number of owners in the cooperative as specified in the bylaws or
39 other organizational documents. If the bylaws or other
40 organizational documents do not expressly specify the number of

1 owners necessary to execute the conveyances and other documents,
2 a majority of owners in the cooperative shall be required to execute
3 the conveyances or other documents. Conveyances and other
4 documents executed under the foregoing provisions shall be
5 binding upon and affect the interests of all parties in the
6 cooperative.

7 *(4) If subdivision, as defined in Section 66424, of the property*
8 *occurred after January 1, 1964, both of the following requirements*
9 *are met:*

10 *(A) A final or parcel map of that subdivision was approved by*
11 *the local agency and recorded, with all of the conditions of that*
12 *map remaining in effect after the conversion.*

13 *(B) No more than 49 percent of the units in the project were*
14 *owned by any one person as defined in Section 17, including an*
15 *incorporator or director of the community apartment project, on*
16 *January 1, 1982.*

17 *(5) The local agency certifies that the above requirements were*
18 *satisfied if the local agency, by ordinance, provides for that*
19 *certification.*

20 (i) The leasing of, or the granting of an easement to, a parcel of
21 land, or any portion or portions thereof, in conjunction with the
22 financing, erection, and sale or lease of a windpowered electrical
23 generation device on the land, if the project is subject to
24 discretionary action by the advisory agency or legislative body.

25 (j) The leasing or licensing of a portion of a parcel, or the
26 granting of an easement, use permit, or similar right on a portion
27 of a parcel, to a telephone corporation as defined in Section 234
28 of the Public Utilities Code, exclusively for the placement and
29 operation of cellular radio transmission facilities, including, but
30 not limited to, antennae support structures, microwave dishes,
31 structures to house cellular communications transmission
32 equipment, power sources, and other equipment incidental to the
33 transmission of cellular communications, if the project is subject
34 to discretionary action by the advisory agency or legislative body.

35 (k) Leases of agricultural land for agricultural purposes. As used
36 in this subdivision, “agricultural purposes” means the cultivation
37 of food or fiber, or the grazing or pasturing of livestock.

38 (l) The leasing of, or the granting of an easement to, a parcel of
39 land, or any portion or portions thereof, in conjunction with the
40 financing, erection, and sale or lease of a solar electrical generation

1 device on the land, if the project is subject to review under other
2 local agency ordinances regulating design and improvement or, if
3 the project is subject to other discretionary action by the advisory
4 agency or legislative body.

5 SEC. 3. Section 18031.7 of the Health and Safety Code is
6 amended to read:

7 18031.7. (a) Nothing in this part shall prohibit the replacement
8 of water heaters in manufactured homes or mobilehomes with
9 fuel-gas-burning water heaters not specifically listed for use in a
10 manufactured home or mobilehome or from having hot water
11 supplied from an approved source within the manufactured home
12 or mobilehome, or in the garage, in accordance with this part or
13 Part 2.1 (commencing with Section 18200).

14 (b) Nothing in this part shall prohibit the replacement of
15 appliances for comfort heating in manufactured homes,
16 mobilehomes, or multifamily manufactured homes with fuel-gas
17 appliances for comfort heating not specifically listed for use in a
18 manufactured home or mobilehome within the manufactured home,
19 mobilehome, or multifamily manufactured home in accordance
20 with this part, Part 2.1 (commencing with Section 18200), or Part
21 2.3 (commencing with Section 18860).

22 (c) Replacement fuel-gas-burning water heaters shall be listed
23 for residential use and installed within the specifications of that
24 listing to include tiedown or bracing to prevent overturning.

25 (d) Replacement fuel-gas-burning water heaters installed in
26 accordance with subdivision (c) shall bear a label permanently
27 affixed in a visible location adjacent to the fuel gas inlet which
28 reads, as applicable:

29
30
31 WARNING

32
33 This appliance is approved only for use with natural gas (NG).

34
35
36 OR

37
38
39 WARNING

1 This appliance is approved only for use with liquefied petroleum
2 gas (LPG).

3
4
5 Lettering on the label shall be black on a red background and
6 not less than $\frac{1}{4}$ inch in height except for the word “WARNING”
7 which shall be not less than $\frac{1}{2}$ inch in height.

8 (e) (1) All fuel-gas-burning water heater appliances in new
9 manufactured homes or new multifamily manufactured homes
10 installed in the state shall be seismically braced, anchored, or
11 strapped pursuant to paragraph (3) and shall be completed before
12 or at the time of installation of the homes.

13 (2) Any replacement fuel-gas-burning water heater appliances
14 installed in existing mobilehomes, existing manufactured homes,
15 or existing multifamily manufactured homes that are offered for
16 sale, rent, or lease shall be seismically braced, anchored, or
17 strapped pursuant to paragraph (3).

18 (3) On or before July 1, 2009, the department shall promulgate
19 rules and regulations that include standards for water heater seismic
20 bracing, anchoring, or strapping. These standards shall be
21 substantially in accordance with either the guidelines developed
22 pursuant to Section 19215 or the California Plumbing Code (Part
23 5 of Title 24 of the California Code of Regulations), and shall be
24 applicable statewide.

25 (4) The dealer, or manufacturer acting as a dealer, responsible,
26 as part of the purchase contract, for both the sale and installation
27 of any home subject to this subdivision shall ensure all water
28 heaters are seismically braced, anchored, or strapped in compliance
29 with this subdivision prior to completion of installation.

30 (5) In the event of a sale of a home, pursuant to either paragraph
31 (1) of subdivision (e) of Section 18035 or Section 18035.26, the
32 homeowner or contractor responsible for the installation of the
33 home shall ensure all fuel-gas-burning water heater appliances are
34 seismically braced, anchored, or strapped consistent with the
35 requirements of paragraph (3). This requirement shall be satisfied
36 when the homeowner or responsible contractor both ~~completes~~
37 ~~that work~~ *determines that work is complete* and signs a declaration
38 stating each fuel-gas-burning water heater is secured as required
39 by this section on the date the declaration is signed.

1 (f) All used mobilehomes, used manufactured homes, and used
2 multifamily manufactured homes that are sold shall, on or before
3 the date of transfer of title, have the fuel-gas-burning water heater
4 appliance or appliances seismically braced, anchored, or strapped
5 consistent with the requirements of paragraph (3) of subdivision
6 (e). This requirement shall be satisfied if, within 45 days prior to
7 the transfer of title, the transferor signs a declaration stating that
8 each water heater appliance in the used mobilehome, used
9 manufactured home, or used multifamily manufactured home is
10 secured pursuant to paragraph (3) of subdivision (e) on the date
11 the declaration is signed.

12 (g) For sales of manufactured homes or mobilehomes installed
13 on real property pursuant to subdivision (a) of Section 18551, as
14 to real estate agents licensed pursuant to Division 4 (commencing
15 with Section 10000) of the Business and Professions Code, the
16 real estate licensee duty provisions of Section 8897.5 of the
17 Government Code shall apply to this section.

18 SEC. 4. Section 3692.4 of the Revenue and Taxation Code is
19 amended to read:

20 3692.4. (a) Notwithstanding any other provision of law, any
21 county, city, city and county, or any nonprofit organization as
22 defined in Section 3772.5, may request the tax collector to bring
23 to the next scheduled public auction any residential real property
24 that meets all of the following requirements:

25 (1) The property taxes have been delinquent for at least three
26 years.

27 (2) The real property will serve the public benefit of providing
28 housing directly related to low-income persons.

29 (3) The real property is not occupied by the owner as his or her
30 principal place of residence.

31 (b) Every request submitted to the tax collector shall include
32 the following:

33 (1) A formal resolution of the governing board of the county,
34 city, city and county, or nonprofit organization, requesting the
35 accelerated auction of the real property and stating the public
36 benefit.

37 (2) A written plan for the development, rehabilitation, or
38 proposed use of the real property and how low-income persons
39 will be served.

(c) Upon receiving a request as provided by this section, the tax collector shall include the real property in the next scheduled public auction.

(d) (1) If the real property is acquired by a nonprofit organization at auction, a deed restriction shall be placed on the real property, requiring the real property to be used for low-income housing for a period of at least 30 years.

(2) (A) In lieu of the 30-year restriction required by paragraph (1), the deed may provide for equity sharing upon resale, if the real property is a single-family home that will be sold by the nonprofit organization to a low-income owner-occupant.

(B) To the extent not in conflict with another public funding source or law, all of the following shall apply to an equity-sharing agreement provided for by the deed:

(i) Upon resale by an owner-occupant of the home, the owner-occupant of the home shall retain the market value of any improvements, the downpayment, and his or her proportionate share of appreciation. The nonprofit organization shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used for the purpose of providing financial assistance to low-income homebuyers.

(ii) For purposes of this subdivision, the initial subsidy shall be equal to the fair market value of the home at the time of initial sale to the ~~nonprofit organization~~ *low-income owner-occupant* minus the initial sale price to the low-income owner-occupant, plus the amount of any downpayment assistance or mortgage assistance. If upon resale by the owner-occupant the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(iii) For purposes of this subdivision, the nonprofit organization's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

(e) This section may not be construed to preclude the application, to the real property or the current owners of that property, of any other provision of law not in conflict with this section.

SEC. 5. Section 12206 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

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

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

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

39 (C) (i) For a project that receives a preliminary reservation of
40 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 of the *Health and Safety Code* 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

(2) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which 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, providing the agreement includes all of the following provisions:

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

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

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

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

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

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

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

(H) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 SEC. 6. Section 17058 of the Revenue and Taxation Code is
24 amended to read:

25 17058. (a) (1) There shall be allowed as a credit against the
26 amount of net tax (as defined in Section 17039) a state low-income
27 housing credit in an amount equal to the amount determined in
28 subdivision (c), computed in accordance with the provisions of
29 Section 42 of the Internal Revenue Code, except as otherwise
30 provided in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 (3) 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 (4) 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 that, 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 that shall include the amount of the capital
19 contributions actually paid to the housing sponsor and shall not
20 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 be accumulated and 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.

(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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 rental subsidies, and required equity, and a development fee that
2 does not exceed a specified percentage of the eligible basis of the
3 project prior to inclusion of the development fee in the eligible
4 basis, as determined by the committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 This section shall remain in effect on and after December 1,
24 1990, for as long as Section 42 of the Internal Revenue Code,
25 relating to low-income housing credits, remains in effect.

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

29 SEC. 7. Section 23610.5 of the Revenue and Taxation Code
30 is amended to read:

31 23610.5. (a) (1) There shall be allowed as a credit against the
32 "tax" (as defined by Section 23036) a state low-income housing
33 tax credit in an amount equal to the amount determined in
34 subdivision (c), computed in accordance with Section 42 of the
35 Internal Revenue Code of 1986, except as otherwise provided in
36 this section.

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

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

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

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

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

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

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

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

39 (ii) To the extent the allocation of the credit to a partner under
40 this section lacks substantial economic effect, any loss or deduction

1 otherwise allowable under this part that is attributable to the sale
2 or other disposition of that partner's partnership interest made prior
3 to the expiration of the federal credit shall not be allowed in the
4 taxable year in which the sale or other disposition occurs, but shall
5 instead be deferred until and treated as if it occurred in the first
6 taxable year immediately following the taxable year in which the
7 federal credit period expires for the project described in clause (i).

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

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

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

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

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

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

26 (E) For buildings located in designated difficult development
27 areas or qualified census tracts as defined in Section 42(d)(5)(C)
28 of the Internal Revenue Code, credits may be allocated under this
29 section in the amounts prescribed in subdivision (c), provided that
30 the amount of credit allocated under Section 42 of the Internal
31 Revenue Code is computed on 100 percent of the qualified basis
32 of the building.

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

35 (1) In the case of any qualified low-income building placed in
36 service by the housing sponsor during 1987, the term "applicable
37 percentage" means 9 percent for each of the first three years and
38 3 percent for the fourth year for new buildings (whether or not the
39 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).

(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.

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

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

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

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

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

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

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

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 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

1 institutional lenders to the project. The regulatory agreement
2 entered into pursuant to subdivision (f) of Section 50199.14 of the
3 Health and Safety Code shall apply, provided that the agreement
4 includes all of the following provisions:

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

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

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

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

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

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

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

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

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

1 to ensure project completion and operation for the extended use
2 period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) 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 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.

1 For purposes of this subdivision, “affiliated corporation” has the
2 meaning provided in subdivision (b) of Section 25110, as that
3 section was amended by Chapter 881 of the Statutes of 1993, as
4 of the last day of the taxable year in which the credit is allowed,
5 except that “100 percent” is substituted for “more than 50 percent”
6 wherever it appears in the section, as that section was amended by
7 Chapter 881 of the Statutes of 1993, and “voting common stock”
8 is substituted for “voting stock” wherever it appears in the section,
9 as that section was amended by Chapter 881 of the Statutes of
10 1993.

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

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

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

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

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

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

25 (s) The amendments to this section made by the act adding this
26 subdivision shall apply only to taxable years beginning on or after
27 January 1, 1994, except that paragraph (1) of subdivision (q), as
28 amended, shall apply to taxable years beginning on or after January
29 1, 1993.