

AMENDED IN ASSEMBLY MAY 20, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

AMENDED IN ASSEMBLY MARCH 2, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 35

**Introduced by Assembly Members Chiu and Atkins
(Principal coauthor: Assembly Member Wilk)
(Coauthors: Assembly Members Chau and Steinorth)**

December 1, 2014

An act to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 35, as amended, Chiu. Income taxes: credits: low-income housing: allocation increase.

Existing law establishes a low-income housing tax credit program pursuant to which the California Tax Credit Allocation Committee provides procedures and requirements for the allocation of state insurance, personal income, and corporation income tax credit amounts among low-income housing projects based on federal law. Existing law, in modified conformity to federal income tax law, allows the credit based upon the applicable percentage, as defined, of the qualified basis of each qualified low-income building. Existing law limits the total annual amount of the credit that the committee may allocate to \$70 million per year, as specified.

This bill, for calendar years beginning ~~2015~~, 2016, would increase the aggregate housing credit dollar amount that may be allocated among low-income housing projects by \$300,000,000, as specified. The bill, under the insurance taxation law, the Personal Income Tax Law, and the Corporation Tax Law, would modify the definition of applicable percentage relating to qualified low-income buildings that meet specified criteria.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. Section 12206 of the Revenue and Taxation Code
2 is amended to read:
3 12206. (a) (1) There shall be allowed as a credit against the
4 “tax,” as described by Section 12201, a state low-income housing
5 tax credit in an amount equal to the amount determined in
6 subdivision (c), computed in accordance with Section 42 of the
7 Internal Revenue Code except as otherwise provided in this section.
8 (2) “Taxpayer,” for purposes of this section, means the sole
9 owner in the case of a “C” corporation, the partners in the case of
10 a partnership, members in the case of a limited liability company,
11 and the shareholders in the case of an “S” corporation.
12 (3) “Housing sponsor,” for purposes of this section, means the
13 sole owner in the case of a “C” corporation, the partnership in the
14 case of a partnership, the limited liability company in the case of
15 a limited liability company, and the “S” corporation in the case of
16 an “S” corporation.
17 (4) “Extremely low-income” has the same meaning as in Section
18 50053 of the Health and Safety Code.
19 ~~(5) “Rural area” means a rural area as defined in Section~~
20 ~~50199.21 of the Health and Safety Code.~~
21 ~~(6) “Special needs housing” has the meaning as in paragraph~~
22 ~~(4) of subdivision (g) of Section 10325 of Title 4 of the California~~
23 ~~Code of Regulations.~~
24 ~~(7) “SRO” means single room occupancy.~~
25 ~~(8)~~
26 (5) “Very low-income” has the same meaning as in Section
27 50053 of the Health and Safety Code.” Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (1) In the case of any qualified low-income building that is a
30 ~~new-building~~ *building, as defined in Section 42 of the Internal*
31 *Revenue Code and the regulations promulgated thereunder, and*
32 *not federally subsidized, the term “applicable percentage” means*
33 *the following:*

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

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

3 (2) In the case of any qualified low-income building that (i) is
4 a new building, *as defined in Section 42 of the Internal Revenue*
5 *Code and the regulations promulgated thereunder*, (ii) not located
6 in designated difficult development areas (DDAs) or qualified
7 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
8 Internal Revenue Code, and (iii) is federally subsidized, the term
9 “applicable percentage” means for the first three years, 15 percent
10 of the qualified basis of the building, and for the fourth year, 5
11 percent of the qualified basis of the building.

12 (3) In the case of any qualified low-income building that is (i)
13 an existing building, *as defined in Section 42 of the Internal*
14 *Revenue Code and the regulations promulgated thereunder*, (ii)
15 not located in designated difficult development areas (DDAs) or
16 qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)
17 of the Internal Revenue Code, and (iii) is federally subsidized, the
18 term applicable percentage means the following:

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

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

24 (4) In the case of any qualified low-income building that is (i)
25 a new or an existing building, (ii) located in designated difficult
26 development areas (DDAs) or qualified census tracts (QCTs) as
27 defined in Section 42(d)(5)(B) of the Internal Revenue Code, and
28 (iii) federally subsidized, the California Tax Credit Allocation
29 Committee shall ~~determine~~ *reduce* the amount of *California* credit
30 to be allocated under ~~subparagraph (F) of paragraph (2) of~~
31 ~~subdivision (b) required to produce an equivalent state tax credit~~
32 ~~to the taxpayer, as produced in paragraph (2), paragraph (2) and~~
33 ~~(3) by taking into account the increased federal credit received~~
34 *due to* the basis boost provided under Section 42(d)(5)(B) of the
35 Internal Revenue Code.

36 (5) In the case of any qualified low-income building that meets
37 all of the requirements of subparagraphs (A) through (D), inclusive,
38 the term “applicable percentage” means 30 percent for each of the
39 first three years and 5 percent for the fourth year. *A qualified*

1 *low-income building receiving an allocation under this paragraph*
 2 *is ineligible to also receive an allocation under paragraph (3).*

3 (A) The qualified low-income building is at least 15 years old.

4 ~~(B) The qualified low-income building is a SRO, special needs~~
 5 ~~housing, is in a rural area, or serves households with very~~
 6 ~~low-income or extremely low-income residents.~~

7 ~~(C) The qualified low-income building is serving households~~
 8 ~~of very low-income or extremely low-income provided that the~~
 9 ~~average income at time admission is not more than 45 percent of~~
 10 ~~the median gross income, as determined under Section 42 of the~~
 11 ~~Internal Revenue Code, adjusted by household size.~~

12 (B) *The qualified low-income building is serving households of*
 13 *very low-income or extremely low-income such that the average*
 14 *maximum household income as restricted, pursuant to an existing*
 15 *regulatory agreement with a federal, state, county, local, or other*
 16 *governmental agency, is not more than 45 percent of the area*
 17 *median gross income, as determined under Section 42 of the*
 18 *Internal Revenue Code, adjusted by household size, and a tax*
 19 *credit regulatory agreement is entered into for a period of not less*
 20 *than 55 years restricting the average targeted household income*
 21 *to no more than 45 percent of the area median income.*

22 ~~(D)~~

23 (C) The qualified low-income building would have insufficient
 24 credits under paragraphs ~~(1) and~~ (2) and (3) to complete substantial
 25 rehabilitation due to a low appraised value.

26 (D) *The qualified low-income building will complete the*
 27 *substantial rehabilitation in connection with the credit allocation*
 28 *herein.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (g) The aggregate housing credit dollar amount that may be
12 allocated annually by the California Tax Credit Allocation
13 Committee pursuant to this section, Section 17058, and Section
14 23610.5 shall be an amount equal to the sum of all the following:

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

24 (B) An additional three hundred million dollars (\$300,000,000)
25 for the ~~2015~~ 2016 calendar year, and, for the ~~2016~~ 2017 calendar
26 year and each calendar year thereafter, three hundred million
27 dollars (\$300,000,000) increased by the percentage, if any, by
28 which the Consumer Price Index for the preceding calendar year
29 exceeds the Consumer Price Index for the ~~2015~~ 2016 calendar
30 year. For the purposes of this paragraph, the term “Consumer Price
31 Index” means the last Consumer Price Index for All Urban
32 Consumers published by the federal Department of Labor. A
33 housing sponsor receiving an allocation under paragraph (1) of
34 subdivision (c) shall not be eligible for receipt of the housing credit
35 allocated from the increased amount under this subparagraph. A
36 housing sponsor receiving an allocation under paragraph (1) of
37 subdivision (c) shall remain eligible for receipt of the housing
38 credit allocated from the credit ceiling amount under subparagraph
39 (A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 expenses, a supportable debt service, reserves, funds set aside for
2 rental subsidies, and required equity, and a development fee that
3 does not exceed a specified percentage of the eligible basis of the
4 project prior to inclusion of the development fee in the eligible
5 basis, as determined by the committee.

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

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

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

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

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

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

21 (iii) (I) Existing projects that are “at risk of conversion.”

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

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

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

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

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

38 (Id) Programs for rent supplement assistance pursuant to Section
39 18 101 of the Housing and Urban Development Act of 1965,
40 Section 1701s of Title 12 of the United States Code, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (2) “Taxpayer” for purposes of this section means the sole owner
14 in the case of an individual, the partners in the case of a partnership,
15 members in the case of a limited liability company, and the
16 shareholders in the case of an “S” corporation.

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

22 (4) “Extremely low-income” has the same meaning as in Section
23 50053 of the Health and Safety Code.

24 ~~(5) “Rural area” means a rural area as defined in Section~~
25 ~~50199.21 of the Health and Safety Code.~~

26 ~~(6) “Special needs housing” has the meaning as in paragraph~~
27 ~~(4) of subdivision (g) of Section 10325 of Title 4 of the California~~
28 ~~Code of Regulations.~~

29 ~~(7) “SRO” means single room occupancy.~~

30 ~~(8)~~

31 (5) “Very low-income” has the same meaning as in Section
32 50053 of the Health and Safety Code.” *Code.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (E) (i) The California Tax Credit Allocation Committee may
18 allocate a credit under this section in exchange for a credit allocated
19 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
20 amounts up to 30 percent of the eligible basis of a building if the
21 credits allowed under Section 42 of the Internal Revenue Code are
22 reduced by an equivalent amount.

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

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

28 (1) In the case of any qualified low-income building that is a
29 new ~~building~~ *building, as defined in Section 42 of the Internal*
30 *Revenue Code and the regulations promulgated thereunder, and*
31 *not federally subsidized, the term “applicable percentage” means*
32 *the following:*

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

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

1 (2) In the case of any qualified low-income building that (i) is
2 a new building, *as defined in Section 42 of the Internal Revenue*
3 *Code and the regulations promulgated thereunder*, (ii) not located
4 in designated difficult development areas (DDAs) or qualified
5 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
6 Internal Revenue Code, and (iii) is federally subsidized, the term
7 “applicable percentage” means for the first three years, 15 percent
8 of the qualified basis of the building, and for the fourth year, 5
9 percent of the qualified basis of the building.

10 (3) In the case of any qualified low-income building that is (i)
11 an existing building, *as defined in Section 42 of the Internal*
12 *Revenue Code and the regulations promulgated thereunder*, (ii)
13 not located in designated difficult development areas (DDAs) or
14 qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)
15 of the Internal Revenue Code, and (iii) is federally subsidized, the
16 term applicable percentage means the following:

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

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

22 (4) In the case of any qualified low-income building that is (i)
23 a new or an existing building, (ii) located in designated difficult
24 development areas (DDAs) or qualified census tracts (QCTs) as
25 defined in Section 42(d)(5)(B) of the Internal Revenue Code, and
26 (iii) federally subsidized, the California Tax Credit Allocation
27 Committee shall ~~determine~~ *reduce* the amount of *California* credit
28 to be allocated under ~~subparagraph (E) of paragraph (2) of~~
29 ~~subdivision (b) required to produce an equivalent state tax credit~~
30 ~~to the taxpayer, as produced in paragraph (2), subparagraph (2)~~
31 ~~and (3) by taking into account the increased federal credit received~~
32 *due to the basis boost provided under Section 42(d)(5)(B) of the*
33 *Internal Revenue Code.*

34 (5) In the case of any qualified low-income building that meets
35 all of the requirements of subparagraphs (A) through (D), inclusive,
36 the term “applicable percentage” means 30 percent for each of the
37 first three years and 5 percent for the fourth year. *A qualified*
38 *low-income building receiving an allocation under this paragraph*
39 *is ineligible to also receive an allocation under paragraph (3).*

40 (A) The qualified low-income building is at least 15 years old.

1 ~~(B) The qualified low-income building is a SRO, special needs~~
 2 ~~housing, is in a rural area, or serves households with very~~
 3 ~~low-income or extremely low-income residents.~~

4 ~~(C) The qualified low-income building is serving households~~
 5 ~~of very low-income or extremely low-income provided that the~~
 6 ~~average income at time admission is not more than 45 percent of~~
 7 ~~the median gross income, as determined under Section 42 of the~~
 8 ~~Internal Revenue Code, adjusted by household size.~~

9 ~~(D)~~
 10 *(B) The qualified low-income building is serving households of*
 11 *very low-income or extremely low-income such that the average*
 12 *maximum household income as restricted, pursuant to an existing*
 13 *regulatory agreement with a federal, state, county, local, or other*
 14 *governmental agency, is not more than 45 percent of the area*
 15 *median gross income, as determined under Section 42 of the*
 16 *Internal Revenue Code, adjusted by household size, and a tax*
 17 *credit regulatory agreement is entered into for a period of not less*
 18 *than 55 years restricting the average targeted household income*
 19 *to no more than 45 percent of the area median income.*

20 ~~(C) The qualified low-income building would have insufficient~~
 21 ~~credits under paragraphs (1) and (2) and (3) to complete substantial~~
 22 ~~rehabilitation due to a low appraised value.~~

23 ~~(D) The qualified low-income building will complete the~~
 24 ~~substantial rehabilitation in connection with the credit allocation~~
 25 ~~herein.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (B) An additional three hundred million dollars (\$300,000,000)
21 for the ~~2015~~ 2016 calendar year, and, for the ~~2016~~ 2017 calendar
22 year and each calendar year thereafter, three hundred million
23 dollars (\$300,000,000) increased by the percentage, if any, by
24 which the Consumer Price Index for the preceding calendar year
25 exceeds the Consumer Price Index for the ~~2015~~ 2016 calendar
26 year. For the purposes of this paragraph, the term “Consumer Price
27 Index” means the last Consumer Price Index for All Urban
28 Consumers published by the federal Department of Labor. A
29 housing sponsor receiving an allocation under paragraph (1) of
30 subdivision (c) shall not be eligible for receipt of the housing credit
31 allocated from the increased amount under this subparagraph. A
32 housing sponsor receiving an allocation under paragraph (1) of
33 subdivision (c) shall remain eligible for receipt of the housing
34 credit allocated from the credit ceiling amount under subparagraph
35 (A).

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

38 (3) The amount of housing credit ceiling returned in the calendar
39 year. For purposes of this paragraph, the amount of housing credit
40 dollar amount returned in the calendar year equals the housing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (iii) (I) Existing projects that are “at risk of conversion.”

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

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

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

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

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

28 (Id) Programs for rent supplement assistance pursuant to Section
29 18 101 of the Housing and Urban Development Act of 1965,
30 Section 1701s of Title 12 of the United States Code, as amended.

31 (Ie) Programs pursuant to Section 515 of the Housing Act of
32 1949, Section 1485 of Title 42 of the United States Code, as
33 amended.

34 (If) The low-income housing credit program set forth in Section
35 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (n) The credit period with respect to an allocation of credit in
39 1989 by the California Tax Credit Allocation Committee of which

1 any amount is attributable to unallocated credit from 1987 or 1988
 2 shall not begin until after December 31, 1989.

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

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

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

10 (r) This section shall remain in effect on and after December 1,
 11 1990, for as long as Section 42 of the Internal Revenue Code,
 12 relating to low-income housing credit, remains in effect.

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

16 SEC. 3. Section 23610.5 of the Revenue and Taxation Code
 17 is amended to read:

18 23610.5. (a) (1) There shall be allowed as a credit against the
 19 “tax,” as defined by Section 23036, a state low-income housing
 20 tax credit in an amount equal to the amount determined in
 21 subdivision (c), computed in accordance with Section 42 of the
 22 Internal Revenue Code except as otherwise provided in this section.

23 (2) “Taxpayer,” for purposes of this section, means the sole
 24 owner in the case of a “C” corporation, the partners in the case of
 25 a partnership, members in the case of a limited liability company,
 26 and the shareholders in the case of an “S” corporation.

27 (3) “Housing sponsor,” for purposes of this section, means the
 28 sole owner in the case of a “C” corporation, the partnership in the
 29 case of a partnership, the limited liability company in the case of
 30 a limited liability company, and the “S” corporation in the case of
 31 an “S” corporation.

32 (4) “Extremely low-income” has the same meaning as in Section
 33 50053 of the Health and Safety Code.

34 ~~(5) “Rural area” means a rural area as defined in Section~~
 35 ~~50199.21 of the Health and Safety Code.~~

36 ~~(6) “Special needs housing” has the meaning as in paragraph~~
 37 ~~(4) of subdivision (g) of Section 10325 of Title 4 of the California~~
 38 ~~Code of Regulations.~~

39 ~~(7) “SRO” means single room occupancy.~~

40 ~~(8)~~

1 (5) “Very low-income” has the same meaning as in Section
2 50053 of the Health and Safety Code.” Code.

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

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

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

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

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

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

37 (ii) To the extent the allocation of the credit to a partner under
38 this section lacks substantial economic effect, any loss or deduction
39 otherwise allowable under this part that is attributable to the sale
40 or other disposition of that partner’s partnership interest made prior

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

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

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

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

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

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

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

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

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

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

36 (1) In the case of any qualified low-income building that is a
37 ~~new-building~~ *building, as defined in Section 42 of the Internal*
38 *Revenue Code and the regulations promulgated thereunder, and*
39 *not federally subsidized, the term “applicable percentage” means*
40 *the following:*

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

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

9 (2) In the case of any qualified low-income building that (i) is
10 a new building, *as defined in Section 42 of the Internal Revenue*
11 *Code and the regulations promulgated thereunder*, (ii) not located
12 in designated difficult development areas (DDAs) or qualified
13 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
14 Internal Revenue Code, and (iii) is federally subsidized, the term
15 “applicable percentage” means for the first three years, 15 percent
16 of the qualified basis of the building, and for the fourth year, 5
17 percent of the qualified basis of the building.

18 (3) In the case of any qualified low-income building that is (i)
19 an existing building, *as defined in Section 42 of the Internal*
20 *Revenue Code and the regulations promulgated thereunder*, (ii)
21 not located in designated difficult development areas (DDAs) or
22 qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)
23 of the Internal Revenue Code, and (iii) is federally subsidized, the
24 term applicable percentage means the following:

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

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

30 (4) In the case of any qualified low-income building that is (i)
31 a new or an existing building, (ii) located in designated difficult
32 development areas (DDAs) or qualified census tracts (QCTs) as
33 defined in Section 42(d)(5)(B) of the Internal Revenue Code, and
34 (iii) federally subsidized, the California Tax Credit Allocation
35 Committee shall determine the amount of credit to be allocated
36 under subparagraph (E) of paragraph (2) of subdivision (b) required
37 to produce an equivalent state tax credit to the taxpayer, as
38 produced in paragraph (2), taking into account the basis boost
39 provided under Section 42(d)(5)(B) of the Internal Revenue Code.

1 (5) In the case of any qualified low-income building that meets
 2 all of the requirements of subparagraphs (A) through (D), inclusive,
 3 the term “applicable percentage” means 30 percent for each of the
 4 first three years and 5 percent for the fourth year. *A qualified*
 5 *low-income building receiving an allocation under this paragraph*
 6 *is ineligible to also receive an allocation under paragraph (3).*

7 (A) The qualified low-income building is at least 15 years old.

8 ~~(B) The qualified low-income building is a SRO, special needs~~
 9 ~~housing, is in a rural area, or serves households with very~~
 10 ~~low-income or extremely low-income residents.~~

11 ~~(C) The qualified low-income building is serving households~~
 12 ~~of very low-income or extremely low-income provided that the~~
 13 ~~average income at time admission is not more than 45 percent of~~
 14 ~~the median gross income, as determined under Section 42 of the~~
 15 ~~Internal Revenue Code, adjusted by household size.~~

16 ~~(D)~~

17 *(B) The qualified low-income building is serving households of*
 18 *very low-income or extremely low-income such that the average*
 19 *maximum household income as restricted, pursuant to an existing*
 20 *regulatory agreement with a federal, state, county, local, or other*
 21 *governmental agency, is not more than 45 percent of the area*
 22 *median gross income, as determined under Section 42 of the*
 23 *Internal Revenue Code, adjusted by household size, and a tax*
 24 *credit regulatory agreement is entered into for a period of not less*
 25 *than 55 years restricting the average targeted household income*
 26 *to no more than 45 percent of the area median income.*

27 (C) The qualified low-income building would have insufficient
 28 credits under paragraphs ~~(1)~~ and (2) and (3) to complete substantial
 29 rehabilitation due to a low appraised value.

30 *(D) The qualified low-income building will complete the*
 31 *substantial rehabilitation in connection with the credit allocation*
 32 *herein.*

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

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

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

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

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

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

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

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

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

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

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

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

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

34 If, as of the close of any taxable year in the compliance period,
35 after the first year of the credit period, the qualified basis of any
36 building exceeds the qualified basis of that building as of the close
37 of the first year of the credit period, the housing sponsor, to the
38 extent of its tax credit allocation, shall be eligible for a credit on
39 the excess in an amount equal to the applicable percentage
40 determined pursuant to subdivision (c) for the four-year period

1 beginning with the later of the taxable years in which the increase
2 in qualified basis occurs.

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

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

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

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

15 (g) The aggregate housing credit dollar amount that may be
16 allocated annually by the California Tax Credit Allocation
17 Committee pursuant to this section, Section 12206, and Section
18 17058 shall be an amount equal to the sum of all the following:

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

28 (B) An additional three hundred million dollars (\$300,000,000)
29 for the ~~2015~~ 2016 calendar year, and, for the ~~2016~~ 2017 calendar
30 year and each calendar year thereafter, three hundred million
31 dollars (\$300,000,000) increased by the percentage, if any, by
32 which the Consumer Price Index for the preceding calendar year
33 exceeds the Consumer Price Index for the ~~2015~~ 2016 calendar
34 year. For the purposes of this paragraph, the term “Consumer Price
35 Index” means the last Consumer Price Index for All Urban
36 Consumers published by the federal Department of Labor. A
37 housing sponsor receiving an allocation under paragraph (1) of
38 subdivision (c) shall not be eligible for receipt of the housing credit
39 allocated from the increased amount under this subparagraph. A
40 housing sponsor receiving an allocation under paragraph (1) of

1 subdivision (c) shall remain eligible for receipt of the housing
2 credit allocated from the credit ceiling amount under subparagraph
3 (A).

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 shall be substituted in its place:

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

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

37 (2) A requirement that the agreement be recorded 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
6 thereto, and that allows individuals, whether prospective, present,
7 or former occupants of the building, who meet the income
8 limitation applicable to the building, the right to enforce the
9 regulatory 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 allocation dates.

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

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

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

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

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

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

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

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

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

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

1 does not exceed a specified percentage of the eligible basis of the
2 project prior to inclusion of the development fee in the eligible
3 basis, as determined by the committee.

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

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

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

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

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

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

19 (iii) (I) Existing projects that are “at risk of conversion.”

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

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

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

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

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

36 (Id) Programs for rent supplement assistance pursuant to Section
37 18 101 of the Housing and Urban Development Act of 1965,
38 Section 1701s of Title 12 of the United States Code, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (n) The credit period with respect to an allocation of credit in
19 1989 by the California Tax Credit Allocation Committee of which
20 any amount is attributable to unallocated credit from 1987 or 1988
21 shall not begin until after December 31, 1989.

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

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

27 (q) (1) A corporation may elect to assign any portion of any
28 credit allowed under this section to one or more affiliated
29 corporations for each taxable year in which the credit is allowed.
30 For purposes of this subdivision, “affiliated corporation” has the
31 meaning provided in subdivision (b) of Section 25110, as that
32 section was amended by Chapter 881 of the Statutes of 1993, as
33 of the last day of the taxable year in which the credit is allowed,
34 except that “100 percent” is substituted for “more than 50 percent”
35 wherever it appears in the section, as that section was amended by
36 Chapter 881 of the Statutes of 1993, and “voting common stock”
37 is substituted for “voting stock” wherever it appears in the section,
38 as that section was amended by Chapter 881 of the Statutes of
39 1993.

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

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

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

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

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

11 (s) This section shall remain in effect on and after December 1,
12 1990, for as long as Section 42 of the Internal Revenue Code,
13 relating to low-income housing credit, remains in effect.

14 (t) The amendments to this section made by Chapter 1222 of
15 the Statutes of 1993 shall apply only to taxable years beginning
16 on or after January 1, 1994, except that paragraph (1) of subdivision
17 (q), as amended, shall apply to taxable years beginning on or after
18 January 1, 1993.

19 SEC. 4. This act provides for a tax levy within the meaning of
20 Article IV of the Constitution and shall go into immediate effect.

- 5) Defines a QCT as any census tract designated by the U.S. Department of Housing and Urban Development (HUD) in which either 50% or more of the households have an income that is less than 60% of the area median gross income or that has a poverty rate of at least 25%.
- 6) Defines a DDA as an area designated by HUD on an annual basis that has high construction, land, and utility costs relative to area median gross income.

This bill:

- 1) Modifies the allocation of state LIHTC that may be awarded to a federally subsidized low-income housing project receiving federal 4% LIHTC so that:
 - a) A *new* qualified low-income housing building is eligible for a cumulative state LIHTC over four years of 50% of the eligible basis of the building, provided that the building is not located in a DDA or a QCT.
 - b) An *existing* qualified low-income housing building that is not located in a DDA or a QCT is eligible for a cumulative state LIHTC over four years of 13% of the eligible basis of the building.
 - c) A new or existing low-income housing building that is located in a DDA or QCT may be awarded a cumulative state LIHTC in an amount not to exceed 50% of the eligible basis of the building, provided that the federal LIHTC is replaced with state LIHTC, as specified.
 - d) A qualified existing, low-income building that is at least 15 years old is eligible for a cumulative state LIHTC of 95% of the eligible basis over four years if it meets all of the following requirements:
 - The project serves households of very low and extremely low income such that its average maximum household income is not more than 45% of the area median gross income;
 - The project is subject to a regulatory agreement restricting the average maximum household income to the above standard for 55 years;
 - The project would have insufficient credits under current categories to complete substantial rehabilitation; and
 - The credit allocation results in the completion of the project.
- 2) Authorizes TCAC to allocate up to \$300 million in credits in the 2016-17 fiscal year, plus \$300 million each fiscal year thereafter plus an inflation adjustment for projects under the new category, or for projects only eligible

for the 4% credit. TCAC can allocate credits to developers eligible for the 9% credit from the current \$75 million authorization, but developers of these projects are ineligible for allocations from the new \$300 million.

- 3) Imports current definitions for “low-income” and “extremely low-income” and makes other conforming changes.
- 4) Takes effect immediately as a tax levy.

COMMENTS:

- 1) *Purpose of the bill.* According to the author, California’s shortfall of 1.5 million affordable rental units impedes its economic growth by slowing job creation and driving Californians into poverty. When housing costs are accounted for, the proportion of people unable to meet their basic needs — food, shelter, transportation — rises from 16% to 23%, the highest rate of poverty in the nation. Additionally, 21 of the nation’s least affordable cities are in California.

A recent report from the California Housing Partnership depicts a growing statewide crisis driven by a growing divide between incomes and rents. Statewide, median incomes have fallen 8% since 2000; meanwhile, rental prices have risen to 21% in the same timeframe. Further, no county in California has sufficient affordable rental units for low-income individuals.

With the loss of redevelopment and expenditure of the last voter-approved housing bonds, \$1.5 billion of annual state investment dedicated to housing has been eliminated. AB 35 would reverse that by increasing the California LIHTC, a proven public-private-partnership model, by \$300 million per year, and enable the state to attract \$600 million in additional federal funding.

- 2) *Background of the federal LIHTC program.* The LIHTC is an indirect federal subsidy developed in 1986 to incentivize the private development of affordable rental housing for low-income households. The federal LIHTC program enables low-income housing sponsors and developers to raise project equity through the allocation of tax benefits to investors. TCAC administers the program and awards credits to qualified developers who can then sell those credits to private investors who use the credits to reduce their federal tax liability. The developer in turn invests the capital into the affordable housing project.

Two types of federal tax credits are available: the 9% and 4% credits. These terms refer to the approximate percentage of a project's "eligible basis" a taxpayer may deduct from his/her annual federal tax liability in each of 10 years. "Eligible basis" means the cost of development excluding land, transaction costs, and costs incurred for work outside the property boundary. For projects that are not financed with a federal subsidy, the applicable rate is 9%. For projects that are federally subsidized (including projects financed more than 50% with tax-exempt bonds), the applicable rate is 4%. Although the credits are known as the "9% and 4% credits," the actual tax rates fluctuate every month, based on the determination made by the Internal Revenue Service on a monthly basis. Generally, the 9% tax credit amounts to 70% of a taxpayer's eligible basis and the 4% tax credit amounts to 30% of a taxpayer's eligible basis, spread over a 10-year period.

Each year, the federal government allocates funding to the states for LIHTCs on the basis of a per-resident formula. In California, TCAC is the entity that reviews proposals submitted by developers and selects projects based on a variety of prescribed criteria. Only rental housing buildings, which are either undergoing rehabilitation or newly constructed, are eligible for the LIHTC programs. In addition, the qualified low-income housing projects must comply with both rent and income restrictions.

Each state receives an annual ceiling of 9% federal tax credits and they are oversubscribed by a 3:1 ratio. Unlike 9% LIHTC, federal 4% tax credits are not capped; however, they must be used in conjunction with tax-exempt private activity mortgage revenue bonds which are capped and are administered by the California Debt Limit Allocation Committee. In 2015, the state ceiling for private activity bonds is set at \$5.61 billion.

The value of the 4% tax credits is less than half of the 9% tax credits and, as a result, 4% federal credits are generally used in conjunction with another funding source, like state housing bonds or local funding sources. In 2014, developers only used \$80.5 million in annual federal 4% tax credits, significantly less than prior years. This is because, unlike in prior years, there is little supplemental funding from housing bonds or local funding sources to fill the remaining financing gap. The loss of redevelopment funding and state housing bond funds, which were used in combination with 4% federal credits to achieve higher affordability, has made the 4% federal credits less effective.

- 3) *Background of the state LIHTC program.* In 1987, the Legislature authorized a state LIHTC program to augment the federal tax credit program. State tax credits can only be awarded to projects that have also received, or are

concurrently receiving, an allocation of the federal LIHTCs. The amount of state LIHTC that may be annually allocated by the TCAC is limited to \$70 million, adjusted for inflation. In 2014, the total credit amount available for allocation was \$103 million plus any unused or returned credit allocations from previous years. Current state tax law generally conforms to federal law with respect to the LIHTC, except that it is limited to projects located in California.

While the state LIHTC program is patterned after the federal LIHTC program, there are several differences. First, investors may claim the state LIHTC over four years rather than the 10-year federal allocation period. Second, the rates used to determine the total amount of the state tax credit (representing all four years of allocation) are 30% of the eligible basis of a project that is not federally subsidized and 13% of the eligible basis of a project that is federally subsidized, in contrast to 70% and 30% (representing all 10 years of allocation on a present-value basis), respectively, for purposes of the federal LIHTCs. Furthermore, state tax credits are not available for acquisition costs, except for previously subsidized projects that qualify as “at-risk” of being converted to market rate.

Combining federal 9% credits (which amounts to roughly 70%) with state credits (which amounts to 30%) generally equals 100% of a project’s eligible basis. Combining federal 4% credits (which amounts to roughly 30%) with state credits (which amounts to 13%), only results in 43% of a project’s eligible basis.

- 4) *Background of state credits in DDAs and QCTs.* Federal law also allows credits equal to 130% of eligible basis if the project is located in a QCT or a DDA, a so-called “basis boost” of 30%. QCTs are designated by the Secretary of HUD, in which either 50% or more of the households have an income that is less than 60% of the area median gross income or have a poverty rate of 25%. The Secretary of HUD also draws DDAs using a ratio of construction, land, and utility costs to area median gross income.

State law prohibits TCAC from allocating state credits in QCTs or DDAs unless TCAC swaps out federal credits willing to forgo the “basis boost,” so that the combined credit amount doesn’t exceed 130% of basis. The rationale for this prohibition is that projects in these areas can qualify for more federal tax credits through a basis boost and therefore are already advantaged.

State law was recently amended to authorize TCAC, in limited cases, to award state LIHTCs for use in DDAs or QCTs, in addition to the federal credits. To

qualify, a development must restrict at least 50% of the units to special-needs households. The change allows these projects to receive state credits of 30% of basis in addition to federal ones generated on 130% of basis.

- 5) *Increasing amount of state credits.* This bill would increase the state LIHTC allocation by \$300 million per year, in addition to the existing \$70 million cap, as adjusted for inflation. The increase in the amount of state LIHTC would allow the state to leverage an additional \$200 million in federal 4% LIHTC and at least \$400 million in federal tax-exempt bond authority annually. The increase would help fill the gap in funding that was created by the loss of redevelopment and the exhaustion of state voter-approved bonds.
- 6) *Filling the gap.* This bill also increases the amount of state tax credits awarded to each qualified low-income housing project from 13% to 50% of the eligible basis, provided the project is also receiving a 4% federal tax credit. Developers that receive federal 9% credits can combine them with a sufficient subsidy to construct a low-income housing project, but TCAC can only allocate those credits up to a federal cap. While the 4% credits are not subject to a cap, they do not have the same value because developers cannot generate sufficient capital needed to cover the cost of the project. This bill would increase the value of the state credits to secure more interest than the 4% to generate sufficient amounts to construct projects.

This increase would apply to new construction and rehabilitation costs of the project and would more than triple the amount of equity that an investor in the project would receive, which would bring the return on 4% credits in line with 9% credits and would likely result in greater affordability for the project. The costs of acquiring an existing low-income building would also be eligible for the state LIHTC allocated from the new additional funding of \$300 million, but the applicable percentage used to calculate the amount of that credit would be limited to 13% of the project's eligible basis.

- 7) *An extra boost.* Federal law gives projects an extra 30% boost on eligible basis if the project is located in a DDA or QCT. These areas have a higher poverty level and a higher concentration of extremely low-income individuals and families, so deep subsidy is required to make housing affordable. State law does not allow state credits to be awarded in DDAs or QCTs, except for housing developments where 50% of the units are for special-needs populations. The rationale for the prohibition is that projects in these areas can qualify for more federal tax credits and are already advantaged.

The bill allows TCAC to allocate state credits for new or existing buildings in QCTs and DDAs up to 50% of basis of a project receiving a 4% credit, but

must replace federal credits with state ones when doing so. In other words, the state would provide the percentage necessary so that the aggregate of the state credits and the federal boost equal 50% of basis. The main purpose of this change is to provide enough state tax credits to match the value of a 9% federal tax credit. As with the other provisions of the bill, this only changes the state tax credit for projects receiving 4% credits and does not affect projects receiving 9% tax credits.

- 8) *Rehabilitating existing housing stock.* Many low-income housing developments in the state are older and need significant rehabilitation. These projects, therefore, require more investment due to their age and level of repairs, combined with low rents. This bill will significantly increase an amount of state LIHTC — 95% of the eligible basis — that may be awarded to a qualified low-income housing building that houses very low-income or extremely low-income tenants and meets all specified requirements, including the building's location, age, and value.
- 9) *Costs and effects.* The increase in state LIHTCs is a tax credit, which means this is tax liability that would have otherwise gone to the general fund from corporations, which instead choose to invest in low-income housing tax credits. While it's possible that it could take \$300 million from the general fund, the idea is that investors would likely be seeking tax credits elsewhere and might, with the enactment of this bill, now build affordable housing. As previously noted, the increase in the amount of state LIHTC would allow the state to leverage an additional \$200 million in federal 4% LIHTC and at least \$400 million in federal tax-exempt bond authority annually. The sponsors also estimate that if this bill were enacted, 2,000 new rental homes would be created annually.

Further, there are economic impacts from the construction, job creation, and local tax benefits of building multifamily homes. The estimated one-year impacts of building 100 rental apartments in a typical local area include \$11.7 million in local income, \$2.2 million in taxes and other revenue for local governments, and 161 local jobs (1.62 jobs per apartment). The additional, annually recurring impacts of building 100 rental apartments in a typical local area include \$2.6 million in local income, \$503,000 in taxes and other revenue for local governments, and 44 local jobs (.44 jobs per apartment).

- 10) *Double-referred.* This bill was heard in the Senate Governance and Finance Committee on July 1, 2015, and approved 6-0.

Assembly Votes:

Floor: 78-0
Appr: 17-0
Rev&Tax: 9-0
H&CD: 7-0

RELATED LEGISLATION:

SB 377 (Beall, 2015) — allows a taxpayer who receives an allocation of state LIHTC from TCAC to sell all or any portion of the credit to one or more unrelated parties for each taxable year in which the credit is allowed for not less than 80% of the amount of the credit. *This bill is pending in the Assembly Revenue and Taxation Committee.*

AB 952 (Atkins, Chapter 771, Statutes of 2013) — authorizes TCAC to allocate a state LIHTC for buildings located in a DDA or QCT that have at least 50% special-needs occupants.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, July 8, 2015.)

SUPPORT:

California Housing Consortium (co-sponsor)
California Housing Partnership (co-sponsor)
Non-Profit Housing Association of Northern California (co-sponsor)
AARP California
Abode Communities
Apartment Association, California Southern Cities
Apartment Association of Orange County
Aspiranet
BRIDGE Housing
Burbank Housing Corporation
Burbank Housing Development Corporation
California Alliance for Retired Americans
California Apartment Association
California Bankers Association
California Building Industry Association
California Center for Cooperative Development

California Coalition for Youth
California Council for Affordable Housing
California Council of Community Mental Health Agencies
California Economic Summit
California Infill Builders Federation
California Special Districts Association
California State Association of Counties
California State Treasurer
Christian Church (Disciples of Christ) Pacific Southwest Region
City of Alameda
City of Burbank/Burbank Redevelopment Agency
City of Camarillo
City of Chowchilla
City of Concord
City of Culver City
City of Danville
City of Dublin
City of El Centro
City of Emeryville
City of Eureka
City of Fairfield
City of Fremont
City of Glendale
City of Lafayette
City of Lakeport
City of Lakewood
City of Livermore
City of Lodi
City of Los Angeles
City of Merced
City of Morgan Hill
City of Napa
City of Oakland
City of Rocklin
City of Sacramento
City of San Carlos
City of San Francisco
City of San Jose
City of Santa Barbara
City of Santa Monica
City of Santa Rosa
City of Taft

City of Thousand Oaks
City of Torrance
City of Tulare
City of Turlock
City of Union City
City of Ventura
City of Vista
City of West Hollywood
Community Economics, Inc.
Community Housing Opportunities Corporation
Community HousingWorks
Community Land Trust Association of West Marin
Contra Costa County
Contra Costa Interfaith Housing
Core Affordable Housing
County Welfare Directors Association of California
Disability Rights California
Domus Development
EAH Housing
East Bay Developmental Disabilities Legislative Coalition
East Bay Rental Housing Association
Elder Advocates for Community Health
The Episcopal Diocese of Los Angeles
Goldfarb & Lipman LLP
Greenbelt Alliance
Highridge Costa Housing Partners, LLC
Highridge Costa Investors
HIP Housing, Inc.
HKIT Architects
Hollywood Adventist Church
Home Ownership for Personal Empowerment
Housing Authority of the City of San Buenaventura
Housing Authority of the City of Santa Barbara
Housing Authority of the County of Alameda
Housing Leadership Council of San Mateo County
Housing Trust Silicon Valley
Hudson Housing Capital
Irvine Community Land Trust
Islamic Shura Council of Northern California
Jamboree Housing Corporation
The Kennedy Commission
Korean Resource Center

Larkin Street Youth Services
Law Foundation of Silicon Valley
League of California Cities
LINC Housing
Lutheran Office of Public Policy — California
Many Mansions
Marin County Board of Supervisors
Mayor of Long Beach
Mayor of Los Angeles
Mayor of Santa Barbara
Mental Health America of California
Mercy Housing/Bennett House
MidPen Housing Corporation
Monterey County Board of Supervisors
Nancy Lewis Associates
Napa Valley Community Housing
National Association of Social Workers
Nelson Rental Consultant
Nor Cal Rental Property Association
North Los Angeles County Regional Center
North Valley Property Owners Association
Northern California Community Loan Fund
The Pacific Companies
Palm Communities
Peoples' Self-Help Housing
Powell & Partners,, Architects
Rural Communities Housing Development Corporation
Rural Community Assistance Corporation
Sacramento Loaves & Fishes
San Diego County Apartment Association
San Diego Housing Commission
San Francisco County
San Francisco Housing Action Coalition
San Francisco Unified School District
San Luis Obispo County Housing Trust Fund
San Mateo County
Santa Clara County Board of Supervisors
Satellite Affordable Housing Associates
Seventh-Day Adventist Church, Santa Clarita
SHELTER, Inc.
Shelter Partnership, Inc.
Silicon Valley Bank

Southwest California Legislative Council
Trinity Center
United Ways of California
Venice Community Housing Corporation
Ward Economic Development Corporation
Western Seniors Housing, Inc.
Women Organizing Resources, Knowledge and Services
Yolo Housing
17 individuals

OPPOSITION:

City of Banning

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