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:

SECTION 1. Section 12206 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

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

~~(7) "SRO" means single room occupancy.~~

~~(8)~~

(5) "Very low-income" has the same meaning as in Section 50053 of the Health and Safety ~~Code."~~ *Code.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(D)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) An additional three hundred million dollars ($300,000,000) for the ~~2015~~ *2016* calendar year, and, for the ~~2016~~ *2017* calendar year and each calendar year thereafter, three hundred million dollars ($300,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the ~~2015~~ *2016* calendar year. For the purposes of this paragraph, the term "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the federal Department of Labor. A housing sponsor receiving an allocation under paragraph (1) of subdivision (c) shall not be eligible for receipt of the housing credit allocated from the increased amount under this subparagraph. A housing sponsor receiving an allocation under paragraph (1) of subdivision (c) shall remain eligible for receipt of the housing credit allocated from the credit ceiling amount under subparagraph (A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) (I) Existing projects that are "at risk of conversion."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, the limited liability company in the case of a limited liability company, and the "S" corporation in the case of an "S" corporation.

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

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

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

~~(7) "SRO" means single room occupancy.~~

~~(8)~~

(5) "Very low-income" has the same meaning as in Section 50053 of the Health and Safety ~~Code."~~ *Code.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(D)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) An additional three hundred million dollars ($300,000,000) for the ~~2015~~ *2016* calendar year, and, for the ~~2016~~ *2017* calendar year and each calendar year thereafter, three hundred million dollars ($300,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the ~~2015~~ *2016* calendar year. For the purposes of this paragraph, the term "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the federal Department of Labor. A housing sponsor receiving an allocation under paragraph (1) of subdivision (c) shall not be eligible for receipt of the housing credit allocated from the increased amount under this subparagraph. A housing sponsor receiving an allocation under paragraph (1) of subdivision (c) shall remain eligible for receipt of the housing credit allocated from the credit ceiling amount under subparagraph (A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) (I) Existing projects that are "at risk of conversion."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(7) "SRO" means single room occupancy.~~

~~(8)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(D)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) An additional three hundred million dollars ($300,000,000) for the ~~2015~~ *2016* calendar year, and, for the ~~2016~~ *2017* calendar year and each calendar year thereafter, three hundred million dollars ($300,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the ~~2015~~ *2016* calendar year. For the purposes of this paragraph, the term "Consumer Price Index" means the last Consumer Price Index for All Urban Consumers published by the federal Department of Labor. A housing sponsor receiving an allocation under paragraph (1) of subdivision (c) shall not be eligible for receipt of the housing credit allocated from the increased amount under this subparagraph. A housing sponsor receiving an allocation under paragraph (1) of subdivision (c) shall remain eligible for receipt of the housing credit allocated from the credit ceiling amount under subparagraph (A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) (I) Existing projects that are "at risk of conversion."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2015 - 2016 Regular

Bill No:	AB 35	**Hearing Date:**	7/14/2015
Author:	Chiu		
Version:	5/20/2015		
Urgency:	Yes, Tax Levy	**Fiscal:**	Yes
Consultant:	Alison Dinmore		

SUBJECT: Income taxes: credits: low-income housing: allocation increase

DIGEST: This bill increases the amount of state tax credits the California Tax Credit Allocation Committee (TCAC) can allocate for low-income housing and makes other changes to the state low-income housing tax credit (LIHTC) program.

ANALYSIS:

Existing law:

1) Provides that a low-income housing development that is a new building and is receiving 9% federal LIHTC credits is eligible to receive state LIHTC over four years of 30% of the eligible basis of the building.

2) Provides that a low-income housing development that is a new building that is receiving federal LIHTC and is "at risk of conversion" to market rate is eligible to receive state LIHTC over four years of 13% of the eligible basis of the building.

3) Allows TCAC to award state LIHTCs to developments in a qualified census tract (QCT) or a difficult to designated difficult development area (DDA) if the project is also receiving federal LIHTC, under the following conditions:

   a) Developments restrict at least 50% of the units to special needs households; and
   b) The state credits do not exceed 130% of the eligible basis of the building.

4) Allows TCAC to replace federal LIHTC with state LIHTC of up to 130% of a project's eligible basis if the federal LIHTC is reduced in an equivalent amount.

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

-- END –