H.B. NO. 3059

A BILL FOR AN ACT

RELATING TO LOW-INCOME HOUSING TAX CREDITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 235-110.8, Hawaii Revised Statutes, is amended to read as follows:

"**§235-110.8 Low-income housing tax credit.** (a) Section 42 (with respect to low-income housing tax credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section[~~.~~], except as provided otherwise in this section.

(b) Each taxpayer subject to the tax imposed by this chapter, who has filed [~~[~~]a[~~]~~] net income tax return for a taxable year may claim a low-income housing tax credit against the taxpayer's net income tax liability. The amount of the credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed on a timely basis. A credit under this section may be claimed whether or not the taxpayer claims a federal low-income housing tax credit pursuant to section 42 of the Internal Revenue Code.

(c) The low-income housing tax credit shall be fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii. The applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.

(d) For the purposes of this section, the determination of:

(1) Qualified basis and qualified low-income building shall be made under section 42(c);

(2) Eligible basis shall be made under section 42(d);

(3) Qualified low-income housing project shall be made under section 42(g);

(4) Recapture of credit shall be made under section 42(j), except that the tax for the taxable year shall be increased under section 42(j)(1) only with respect to credits that were used to reduce state income taxes;

(5) Application of at-risk rules shall be made under section 42(k);

of the Internal Revenue Code.

(e) As provided in section 42(e), rehabilitation expenditures shall be treated as separate new building and their treatment under this section shall be the same as in section

42(e). The definitions and special rules relating to credit period in section 42(f) and the definitions and special rules in section 42(i) shall be operative for the purposes of this section.

(f) The state housing credit ceiling under section 42(h) shall be zero for the calendar year immediately following the expiration of the federal low-income housing tax credit program and for any calendar year thereafter, except for the carryover of any credit ceiling amount for certain projects in progress which, at the time of the federal expiration, meet the requirements of section 42.

(g) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. For the purpose of deducting this tax credit, net income tax liability means net income tax liability reduced by all other credits allowed the taxpayer under this chapter.

A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a tax credit under this section must be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed.

Failure to properly and timely claim the credit shall constitute a waiver of the right to claim the credit. A taxpayer may claim a credit under this section only if the building or project is a qualified low-income housing building or a qualified low-income housing project under section 42 of the Internal Revenue Code.

Section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall be applied in claiming the credit under this section.

(h) In the case of any qualified low-income housing project placed in service beginning on January 1, 2009, section 42(b)(2)(B) of the Internal Revenue Code shall be modified as follows: the percentages prescribed by the Secretary for any month shall be percentages which will yield over a five-year period amounts of credit under subsection (a) which have present value equal to:

(1) 70 percent of the qualified basis of a building described in paragraph (1)(A); and

(2) 30 percent of the qualified basis of a building described in paragraph (1)(B).

(i) In the case of any qualified low-income housing project placed in service beginning on January 1, 2009, section 42(f)(1) of the Internal Revenue Code shall be modified as follows: the term "credit period" means, with respect to any building, the period of five taxable years beginning with:

(1) The taxable year in which the building is placed in service; or

(2) At the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the first year of such period. The election under paragraph (2), once made, shall be irrevocable.

(j) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect on January 1, 2009.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3069

Report Title:
Low-Income Housing; Tax Credits

Description:
Reduces the period over which state low-income housing tax credits are taken from 10 years to 5 years.

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JUSTIFICATION SHEET

DEPARTMENT:	Business, Economic Development and Tourism
TITLE:	A BILL FOR AN ACT RELATING TO LOW-INCOME HOUSING TAX CREDITS.
PURPOSE:	To make state low income housing tax credits more valuable by shortening the period over which the credits can be taken from ten years to five years.
MEANS:	Amend section 235-110.8, Hawaii Revised Statutes.

JUSTIFICATION: The low income housing tax credit (LIHTC) program promotes the development and rehabilitation of low-income rental housing through the use of federal and state LIHTCs. Eligible projects must either set aside 20 percent of units for tenants earning less than 50 percent of the area median income (AMI) as determined by the U.S. Department of Housing and Urban Development (HUD); or 40 percent of units for tenants earning less than 60 percent AMI. The program continues to be a powerful financing tool for affordable rental housing development, especially when awarded in conjunction with state rental housing trust funds.

Currently, both the federal and state LIHTCs are generally governed by the requirements of section 42 of the Internal Revenue Code. The State of Hawaii is allotted a per capital tax credit volume cap, currently $2,500,000 annually. A dollar-for-dollar credit is given to eligible projects on a competitive basis. The annual federal LIHTC is either 9 percent (competitive tax credits) or 4 percent (non-competitive tax credits) of qualified development costs.

The annual state credit is equal to 50 percent of the federal credit allocation. The LITHCs are taken over a ten year period

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by the project owner. The credit is available only on the portion of the project that is set-aside for low-income tenants and may be kept by the owner-developer, or sold to qualified investors/partners to raise equity for the development of the project. The federal LIHTCs are generally worth up to 95 percent of their face value when sold. However, because of the limited market for state credits, owner-developers are getting approximately 35 cents on the dollar for the state LIHTCs. Changes to the state LIHTC could improve their value to finance more affordable rental housing units.

Amending the period over which state LIHTCs are taken from ten years to five years would increase the present value of the credits when sold to investors, and provide a more attractive financing incentive to potential developers of affordable rental housing. This measure directly supports DBEDT's strategic objective to create workforce housing units to support a skilled labor force in Hawaii.

GENERAL FUND:	FY2009 - No impact. FY2010 - $(1.25M) FY2011 - $(2.50M) FY2012 - $(3.13M) FY2013 - $(3.25M)
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	BED 160.
OTHER AFFECTED AGENCIES:	TAX
EFFECTIVE DATE:	January 1, 2009.