

S.B. NO. 2678

JAN 25 2010

A BILL FOR AN ACT

RELATING TO LOW-INCOME HOUSING TAX CREDITS.

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

1 SECTION 1. Chapter 201H, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§201H- Low-income housing tax credit loan. (a) The
5 corporation may provide a no interest low-income housing tax
6 credit loan to an owner of a qualified low-income building that
7 has been awarded federal credits which are subject to the state
8 housing credit ceiling under section 42(h)(3)(C) of the Internal
9 Revenue Code or a subaward under section 1602 of the American
10 Recovery and Reinvestment Act of 2009, P.L. 111-5. The loan
11 shall be in an amount equal to seventy per cent of the cash
12 value of the amount of the low-income housing credit that would
13 otherwise have been claimable with respect to the qualified low-
14 income building under section 235-110.8, for each taxable year
15 in the ten-year credit period discounted to present day value
16 and capitalized at the rate of interest on the taxable general
17 obligation bonds used to fund such loan.

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1 (b) A qualified low-income building for which the owner is
2 provided a low-income housing tax credit loan under this section
3 shall not be eligible for the credit under section 235-110.8.

4 (c) The corporation shall impose conditions or
5 restrictions on the low-income housing tax credit loan
6 including:

7 (1) A requirement providing for acceleration and repayment
8 on any no interest loan under this section so as to
9 assure that the building with respect to which such
10 loan is made remains a qualified low-income building
11 under section 42 of the Internal Revenue Code or
12 section 1602 of the American Recovery and Reinvestment
13 Act of 2009, P.L. 111-5. Any such repayment shall be
14 payable to the housing finance revolving fund and may
15 be enforced by means of liens or such other methods as
16 the corporation deems appropriate;

17 (2) The same limitations on rent and income, and use
18 restrictions on such buildings as under an allocation
19 of housing credit dollar amount allocated under
20 section 42 of the Internal Revenue Code; and

21 (3) The payment of reasonable fees for the corporation to
22 perform or cause to be performed asset management

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1 functions to ensure compliance with section 42 of the
2 Internal Revenue Code and the long-term viability of
3 buildings funded by any no interest loan under this
4 section.

5 (d) The corporation shall perform asset management
6 functions to ensure compliance with Section 42 of the Internal
7 Revenue Code or section 1602 of the American Recovery and
8 Reinvestment Act of 2009, P.L. 111-5, and the long-term
9 viability of buildings funded by a no interest loan under this
10 section.

11 (e) The corporation may collect reasonable fees from the
12 owner of a qualified low-income building to cover expenses
13 associated with the performance of its duties under this section
14 and may retain an agent or other private contractor to satisfy
15 the requirements of this section.

16 (f) If the owner is not in default, the corporation shall
17 contribute the no interest loan to the owner of the qualified
18 low-income building after thirty years.

19 (g) For purposes of this section "qualified low-income
20 building" shall have the same meaning as used in section
21 42(c)(2) of the Internal Revenue Code."

1 SECTION 2. Section 235-110.8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§235-110.8 Low-income housing tax credit. (a) Section
4 42 (with respect to low-income housing credit) of the Internal
5 Revenue Code shall be operative for the purposes of this chapter
6 as provided in this section. A qualified low-income building
7 that has been awarded a subaward under section 1602 of the
8 American Recovery and Reinvestment Act of 2009, P.L. 111-5,
9 shall also be eligible for the credit provided in this section.

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

20 (c) The amount of the low-income housing tax credit that
21 may be claimed by a taxpayer as provided in subsection (b) shall
22 be fifty per cent of the applicable percentage of the qualified

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1 basis of each building located in Hawaii. The applicable
2 percentage shall be calculated as provided in section 42(b) of
3 the Internal Revenue Code. If a qualified low-income building
4 has been awarded a subaward under section 1602 of the American
5 Recovery and Reinvestment Act of 2009, P.L. 111-5, for purposes
6 of subsection (b), the amount of the low-income housing tax
7 credit shall be equal to fifty per cent of the amount of the
8 federal low-income housing tax credits that would have been
9 allocated to the qualified low-income building pursuant to
10 section 42(b) of the Internal Revenue Code by the Hawaii housing
11 finance and development corporation had a subaward not been
12 awarded with respect to the qualified low-income building.

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

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

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

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

20 (4) Recapture of credit shall be made under section 42(j),
21 except that the tax for the taxable year shall be
22 increased under section 42(j)(1) only with respect to

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1 credits that were used to reduce state income taxes;

2 and

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

5 of the Internal Revenue Code.

6 (e) As provided in section 42(e), rehabilitation
7 expenditures shall be treated as a separate new building and
8 their treatment under this section shall be the same as in
9 section 42(e). The definitions and special rules relating to
10 credit period in section 42(f) and the definitions and special
11 rules in section 42(i) shall be operative for the purposes of
12 this section.

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

20 (g) The credit allowed under this section shall be claimed
21 against net income tax liability for the taxable year. For the
22 purpose of deducting this tax credit, net income tax liability

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1 means net income tax liability reduced by all other credits
2 allowed the taxpayer under this chapter.

3 A tax credit under this section which exceeds the
4 taxpayer's income tax liability may be used as a credit against
5 the taxpayer's income tax liability in subsequent years until
6 exhausted. All claims for a tax credit under this section must
7 be filed on or before the end of the twelfth month following the
8 close of the taxable year for which the credit may be claimed.
9 Failure to properly and timely claim the credit shall constitute
10 a waiver of the right to claim the credit. A taxpayer may claim
11 a credit under this section only if the building or project is a
12 qualified low-income housing building or a qualified low-income
13 housing project under section 42 of the Internal Revenue Code.

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

17 (h) In lieu of the credit awarded under this section to a
18 qualified low-income building that has been awarded federal
19 credits which are subject to the state housing credit ceiling
20 under section 42(h)(3)(C) of the Internal Revenue Code or a
21 subaward under section 1602 of the American Recovery and
22 Reinvestment Act of 2009, P.L. 111-5, the owner of the qualified

1 low-income building may make a request to the Hawaii housing
2 finance and development corporation for a loan under section
3 201H- . If the owner elects to receive the loan pursuant to
4 section 201H- , the qualified low-income building shall not
5 be eligible for the credit under this section.

6 [~~h~~] (i) The director of taxation may adopt any rules
7 under chapter 91 and forms necessary to carry out this section."

8 SECTION 3. The director of finance is authorized to issue
9 general obligation bonds in the sum of \$ _____ or so much
10 thereof as may be necessary and the same sum or so much thereof
11 as may be necessary is appropriated for fiscal year 2010-2011
12 for low-income housing tax credit loans made pursuant to section
13 201H-___.

14 SECTION 4. The appropriation made for the low-income
15 housing tax credit loans authorized by this Act shall not lapse
16 at the end of the fiscal year for which the appropriation is
17 made; provided that all moneys from the appropriation
18 unencumbered as of June 30, 2012, shall lapse as of that date.

19 SECTION 5. The sum appropriated may be expended by the
20 Hawaii housing finance and development corporation for the
21 purpose of making low-income housing tax credit loans.

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1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2010, and
4 shall apply to qualified low-income buildings placed in service
5 after December 31, 2010.

6
7
8

INTRODUCED BY: _____

~~_____~~
BY REQUEST

Report Title:

Low-Income Housing Tax Credits; Grant Exchange Program

Description:

Establishes a program for granting low-income housing tax credit loans in lieu of low-income housing tax credits administered by the Hawaii Housing Finance and Development Corporation.

Authorizes issuance of general obligation bonds to fund loans.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development and Tourism

TITLE: RELATING TO LOW-INCOME HOUSING TAX CREDITS.

PURPOSE: To establish a program for granting state low-income housing tax credit (LIHTC) loans in lieu of low-income housing tax credits administered by the HHFDC.

MEANS: Add a new section to chapter 201H, Hawaii Revised Statutes (HRS). Amend section 235-110.8, HRS.

JUSTIFICATION: The intent of this proposal is to make the State Low-Income Housing Tax Credit (LIHTC) program more efficient as a financing tool for affordable rental housing development by monetizing the State LIHTC. Currently, the going market rate of State LIHTCs sold by affordable rental housing developers who were issued State LIHTCs is approximately \$0.25 on the dollar, if the credits can be syndicated at all under current market conditions. For every dollar of State tax revenue lost, only \$0.25 goes towards the construction of affordable rental housing.

This situation could be remedied by enacting language similar in effect to section 1602 of the American Recovery and Reinvestment Act of 2009, P.O. 111-5, which allows the exchange of Federal LIHTCs allocated to eligible affordable rental housing projects for loan funds, so that projects stalled because of the lack of willing investors due to the recession can be restarted.

The credit exchange program proposed in this bill would work as follows: in lieu of allocating 9 per cent State LIHTCs to the affordable rental housing developers that the HHFDC selects under its competitive applications process, General Obligation

(G.O.) bonds would be issued to fund LIHTC loans.

The amount of the LIHTC loans will be discounted to (1) reflect the present day value of LIHTCs that are normally taken over a 10 year period; (2) capitalize the loan at the rate of interest on the taxable general obligation bonds used to fund such loans; and (3) discount the amount by 70 percent because the Department of Taxation has determined that the State LIHTC utilization rate is approximately 70 percent of the total of 9 percent LIHTCs that are allocated. These discounts will render the credit exchange program budget neutral as compared to the status quo for the State LIHTC program. In other words, monetizing the State LIHTC will be a more efficient financing tool because it will double the amount of cash proceeds available for affordable rental housing development given the poor market for State LIHTCs. Meanwhile, because the amounts available for the proposed loan program have been appropriately discounted, it does not have a budgetary impact to the State.

Impact on the public: Monetizing the State LIHTC will result in doubling the proceeds generated for affordable rental housing development at the same cost to the State.

Impact on the department and other agencies:
None.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	BED 160
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2010.