



GOV. MSG. NO. 1261

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 23, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

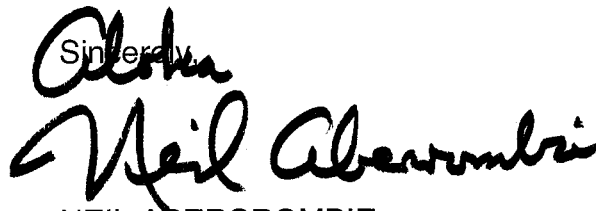
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 23, 2011, the following bill was signed into law:

HB960 HD1 SD2 CD1

RELATING TO LOW-INCOME HOUSING.
Act 158 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

on JUN 23 2011

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 158
H.B. NO.

960
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO LOW-INCOME HOUSING.

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

1 SECTION 1. The state low-income housing tax credit under
2 section 235-110.8, Hawaii Revised Statutes, was established to
3 help finance the development or substantial rehabilitation of
4 affordable rental housing. Under the program, an owner of a
5 qualified low-income building who is awarded state tax credits
6 will typically sell the credits to investors. Investors receive
7 a dollar-for-dollar offset in state income tax liability over a
8 ten-year period and owners generate project equity to help
9 finance the rental housing development. With the economic
10 downturn and diminished investor demand and subsequently
11 weakened value for state low-income housing tax credits, owners
12 are unable to generate sufficient project equity through the
13 sale of the credits. On average, for every dollar of tax credit
14 provided, only twenty-five cents is realized in project equity.
15 Consequently, the development or preservation of affordable
16 rental housing has stalled.



1 The legislature finds that the need for affordable rental
2 housing is substantial. By 2015, approximately seventeen
3 thousand four hundred affordable rental housing units will be
4 needed for households earning eighty per cent and below of the
5 median family income. Due to the lack of affordable rental
6 housing, these households carry heavy burdens with regard to the
7 cost of rent, housing quality, overcrowding, and risk of
8 homelessness.

9 The legislature also finds that because of the weakened
10 value of state low-income housing tax credits, the program is
11 not able to effectively produce or preserve sorely-needed rental
12 housing. Section 1602 of the American Recovery and Reinvestment
13 Act of 2009, Public Law 111-5, a federal program that has
14 allowed for the exchange of federal tax credits awarded under a
15 state's low-income housing tax credit volume cap for direct
16 loans, has stimulated the development of rental housing projects
17 across the nation. A similar state program allowing for the
18 exchange of state low-income housing credits for direct loans
19 would stimulate rental housing projects in Hawaii.

20 The legislature also finds that forgiveness of the amount
21 under the proposed direct loans after thirty years for an



1 affordable rental housing project would provide an additional
2 incentive to stimulate affordable rental housing development,
3 and is therefore in the public interest.

4 The purpose of this Act is to encourage the development and
5 preservation of rental housing for lower income households by
6 creating a cost-effective financing mechanism for projects that
7 are awarded state low-income housing tax credits.

8 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 "§201H- Low-income housing tax credit loan. (a) The
12 corporation may provide a no-interest low-income housing tax
13 credit loan to an owner of a qualified low-income building that
14 has been awarded federal tax credits that are subject to the
15 state housing credit ceiling under section 42(h)(3)(C) of the
16 Internal Revenue Code, federal credits that are allocated
17 pursuant to section 42(h)(4) of the Internal Revenue Code, or a
18 subaward under Section 1602 of the American Recovery and
19 Reinvestment Act of 2009, Public Law 111-5. The loan shall be
20 in an amount equal to seventy per cent of the cash value of the
21 amount of the low-income housing tax credit that would otherwise



1 have been claimable with respect to the qualified low-income
2 building under section 235-110.8 for each taxable year in the
3 ten-year credit period, discounted to present day value and
4 capitalized at the rate of interest on the taxable general
5 obligation bonds used to fund the loan.

6 (b) An owner who is provided a low-income housing tax
7 credit loan under this section shall not be eligible for the
8 state income tax credit under section 235-110.8.

9 (c) The corporation shall impose conditions or
10 restrictions on the low-income housing tax credit loan,
11 including:

12 (1) A requirement providing for acceleration and repayment
13 on any no-interest loan under this section to assure
14 that the building with respect to which the loan is
15 made remains a qualified low-income building under
16 section 42 of the Internal Revenue Code or Section
17 1602 of the American Recovery and Reinvestment Act of
18 2009, Public Law 111-5. Any such repayment shall be
19 payable to the housing finance revolving fund and may
20 be enforced by means of liens or other methods as the
21 corporation deems appropriate;



- 1 (2) The same limitations on rent, income, and use
2 restrictions as applied under an allocation of a
3 housing credit dollar amount allocated under section
4 42 of the Internal Revenue Code; and
- 5 (3) The payment of reasonable fees for the corporation to
6 perform or cause to be performed asset management
7 functions to ensure compliance with section 42 of the
8 Internal Revenue Code and the long-term viability of
9 buildings funded by any no-interest loan under this
10 section.
- 11 (d) The corporation shall perform asset management
12 functions to ensure compliance with section 42 of the Internal
13 Revenue Code or Section 1602 of the American Recovery and
14 Reinvestment Act of 2009, Public Law 111-5, to sustain the long-
15 term viability of buildings funded by a no-interest loan under
16 this section.
- 17 (e) The corporation may collect reasonable fees from the
18 owner of a qualified low-income building to cover expenses
19 associated with the performance of the corporation's duties
20 under this section and may retain an agent or other private
21 contractor to satisfy the requirements of this section.



1 (f) If the owner is not in default, the corporation may
2 forgive the amount remaining under the no-interest loan to the
3 owner of the qualified low-income building after thirty years.

4 (g) For purposes of this section, "qualified low-income
5 building" shall have the same meaning as used in section
6 42(c)(2) of the Internal Revenue Code."

7 SECTION 3. Section 235-110.8, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§235-110.8 Low-income housing tax credit.** (a) Section
10 42 (with respect to low-income housing credit) of the Internal
11 Revenue Code shall be operative for the purposes of this chapter
12 as provided in this section. A taxpayer owning a qualified low-
13 income building who has been awarded a subaward under Section
14 1602 of the American Recovery and Reinvestment Act of 2009,
15 Public Law 111-5, shall also be eligible for the credit provided
16 in this section.

17 (b) Each taxpayer subject to the tax imposed by this
18 chapter, who has filed [+]a[+] net income tax return for a
19 taxable year may claim a low-income housing tax credit against
20 the taxpayer's net income tax liability. The amount of the
21 credit shall be deductible from the taxpayer's net income tax



1 liability, if any, imposed by this chapter for the taxable year
2 in which the credit is properly claimed on a timely basis. A
3 credit under this section may be claimed whether or not the
4 taxpayer claims a federal low-income housing tax credit pursuant
5 to section 42 of the Internal Revenue Code.

6 (c) The amount of the low-income housing tax credit that
7 may be claimed by a taxpayer as provided in subsection (b) shall
8 be fifty per cent of the applicable percentage of the qualified
9 basis of each building located in Hawaii. The applicable
10 percentage shall be calculated as provided in section 42(b) of
11 the Internal Revenue Code.

12 (d) If a subaward under Section 1602 of the American
13 Recovery and Reinvestment Act of 2009, Public Law 111-5, has
14 been issued for a qualified low-income building, the amount of
15 the low-income housing tax credits that may be claimed by a
16 taxpayer as provided in subsection (b) shall be equal to fifty
17 per cent of the amount of the federal low-income housing tax
18 credits that would have been allocated to the qualified low-
19 income building pursuant to section 42(b) of the Internal
20 Revenue Code by the corporation had a subaward not been awarded
21 with respect to the qualified low-income building.



1 ~~[(d)]~~ (e) For the purposes of this section, the
2 determination of:

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

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

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

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

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

15 of the Internal Revenue Code.

16 ~~[(e)]~~ (f) As provided in section 42(e), rehabilitation
17 expenditures shall be treated as a separate new building and
18 their treatment under this section shall be the same as in
19 section 42(e). The definitions and special rules relating to
20 credit period in section 42(f) and the definitions and special



1 rules in section 42(i) shall be operative for the purposes of
2 this section.

3 ~~[(f)]~~ (g) The state housing credit ceiling under section
4 42(h) shall be zero for the calendar year immediately following
5 the expiration of the federal low-income housing tax credit
6 program and for any calendar year thereafter, except for the
7 carryover of any credit ceiling amount for certain projects in
8 progress which, at the time of the federal expiration, meet the
9 requirements of section 42.

10 ~~[(g)]~~ (h) The credit allowed under this section shall be
11 claimed against net income tax liability for the taxable year.
12 For the purpose of deducting this tax credit, net income tax
13 liability means net income tax liability reduced by all other
14 credits allowed the taxpayer under this chapter.

15 A tax credit under this section ~~[which]~~ that exceeds the
16 taxpayer's income tax liability may be used as a credit against
17 the taxpayer's income tax liability in subsequent years until
18 exhausted. All claims for a tax credit under this section
19 ~~[must]~~ shall be filed on or before the end of the twelfth month
20 following the close of the taxable year for which the credit may
21 be claimed. Failure to properly and timely claim the credit



1 shall constitute a waiver of the right to claim the credit. A
2 taxpayer may claim a credit under this section only if the
3 building or project is a qualified low-income housing building
4 or a qualified low-income housing project under section 42 of
5 the Internal Revenue Code.

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

9 (i) In lieu of the credit awarded under this section for a
10 qualified low-income building that has been awarded federal
11 credits that are subject to the state housing credit ceiling
12 under section 42(h)(3)(C) of the Internal Revenue Code, federal
13 credits that are allocated pursuant to section 42(h)(4) of the
14 Internal Revenue Code, or a subaward under Section 1602 of the
15 American Recovery and Reinvestment Act of 2009, Public Law 111-
16 5, the taxpayer owning the qualified low-income building may
17 make a request to the corporation for a loan under section 201H-
18 . If the taxpayer elects to receive the loan pursuant to
19 section 201H- , the taxpayer shall not be eligible for the
20 credit under this section.



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

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 2011, and
6 shall apply to qualified low-income buildings placed in service
7 after December 31, 2011.

APPROVED this 23 day of JUN , 2011



GOVERNOR OF THE STATE OF HAWAII

