

JAN 26 2011

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**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. (a) The legislature finds that:
- 2           (1) The state has a great need for affordable rental
- 3           housing, as evidenced by the Hawaii housing policy
- 4           study, 2006 update, which found that approximately
- 5           17,400 affordable rental housing units are projected
- 6           to be needed by 2015;
- 7           (2) The state low-income housing tax credit program,
- 8           established in section 235-110.8, Hawaii Revised
- 9           Statutes, can be a valuable financing tool to promote
- 10          the development or substantial rehabilitation of
- 11          affordable rental housing;
- 12          (3) Under the state low-income housing tax credit program,
- 13          it is required that the owner of a qualified low-
- 14          income rental building set aside a minimum of: (a) 20
- 15          percent of units for tenants earning less than 50
- 16          percent of the area median income as determined by the
- 17          United States Department of Housing and Urban
- 18          Development; or (b) 40 percent of units for tenants

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1           earning less than 60 percent of the area median income  
2           as determined by the United States Department of  
3           Housing and Urban Development. In addition, the  
4           minimum set asides described above must remain for at  
5           least 30 years;

6           (4) The owner of a qualified low-income building who has  
7           been issued applicable low-income housing tax credits  
8           typically sells said tax credits to interested  
9           investors. Under current market conditions, the value  
10          of state low-income housing tax credits is  
11          approximately 25 cents on the dollar, if the credits  
12          can be sold at all. Said funds from the sale of the  
13          low-income housing tax credits are then used to  
14          finance the development or substantial rehabilitation  
15          of a qualified low-income building;

16          (5) In these circumstances, for every dollar of state tax  
17          revenue lost, only 25 cents actually goes towards the  
18          development, construction or substantial  
19          rehabilitation of affordable rental housing;

20          (6) When economic conditions exist in which there is  
21          little demand for the sale of state low-income housing  
22          tax credits, the development and rehabilitation of

1 affordable rental housing projects stalls due to lack  
2 of project equity. In these circumstances, the state  
3 low-income housing tax credit program is not able to  
4 create or preserve low-income rental housing as  
5 intended.

6 (7) This situation could be remedied by enacting language  
7 similar in effect to section 1602 of the American  
8 Recovery and Reinvestment Act of 2009, P.L. 111-5,  
9 which allows the exchange of Federal low-income  
10 housing tax credits allocated to eligible affordable  
11 rental housing projects for direct funds, so that  
12 projects stalled because of the lack of willing  
13 investors can be restarted;

14 (8) In lieu of allocating state volume cap low-income  
15 housing tax credits to the affordable rental housing  
16 developers under the Hawaii housing finance and  
17 development corporation's competitive application  
18 process, general obligation bonds can be issued to  
19 fund loans to the developers;

20 (9) The amount of the proposed loans would be discounted  
21 to reflect the present day value of state low-income  
22 housing tax credits that are normally taken over a 10

1 year period, capitalized at the rate of interest on  
2 the general obligation bonds used to fund such loans,  
3 and discount the amount by 70 per cent, which is the  
4 utilization rate which the Department of Taxation has  
5 determined for the total state volume cap low-income  
6 housing tax credits that are allocated.

7 (10) These discounts will render the tax credit exchange  
8 program budget neutral as compared to the status quo  
9 for the state low-income housing tax credit program.  
10 In other words, monetizing the state low-income  
11 housing tax credit will be a more efficient financing  
12 tool because it may more than double the amount of  
13 cash proceeds available for affordable rental housing  
14 development under the status quo. Meanwhile, because  
15 the amounts available for the proposed loan program  
16 have been appropriately discounted, it does not have a  
17 budgetary impact to the State. Forgiveness of the  
18 amount under the loan after thirty years of compliance  
19 as an affordable rental housing project would provide  
20 a great incentive for the development and substantial  
21 rehabilitation of low-income rental housing, thus  
22 benefitting the State;

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1 (11) Legislation providing for the exchange of state low-  
 2 income housing tax credits for loan funds is for a  
 3 public purpose to promote and stimulate the  
 4 development and rehabilitation of much needed  
 5 affordable rental housing in Hawaii.

6 (b) It is therefore declared to be necessary and it is the  
 7 purpose of this bill to create a mechanism to provide  
 8 alternative financing assistance to affordable rental housing  
 9 developments that are eligible for the state low-income housing  
 10 tax credit program.

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

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

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

6 (b) An owner that is provided a low-income housing tax  
7 credit loan under this section shall not be eligible for the  
8 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 so as to  
14 assure that the building with respect to which such  
15 loan is made remains a qualified low-income building  
16 under section 42 of the Internal Revenue Code or  
17 section 1602 of the American Recovery and Reinvestment  
18 Act of 2009, P.L. 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 such other methods as  
21 the corporation deems appropriate;

1       (2) The same limitations on rent and income and use  
2       restrictions on such buildings as under an allocation  
3       of housing credit dollar amount allocated under  
4       section 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 in compliance with section 42 of the Internal Revenue  
13       Code or section 1602 of the American Recovery and Reinvestment  
14       Act of 2009, P.L. 111-5, for the purpose of sustaining 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 its duties under this section  
20       and may retain an agent or other private contractor to satisfy  
21       the requirements of this section.

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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 for which a subaward under section 1602 of the  
14 American Recovery and Reinvestment Act of 2009, P.L. 111-5, is  
15 issued shall also be eligible for the credit provided in this  
16 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  
22 liability, if any, imposed by this chapter for the taxable year



1 in which the credit is properly claimed on a timely basis. A  
2 credit under this section may be claimed whether or not the  
3 taxpayer claims a federal low-income housing tax credit pursuant  
4 to section 42 of the Internal Revenue Code.

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

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

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

1        [~~(f)~~] (g) The state housing credit ceiling under section  
2 42(h) shall be zero for the calendar year immediately following  
3 the expiration of the federal low-income housing tax credit  
4 program and for any calendar year thereafter, except for the  
5 carryover of any credit ceiling amount for certain projects in  
6 progress which, at the time of the federal expiration, meet the  
7 requirements of section 42.

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

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

1 qualified low-income housing building or a qualified low-income  
2 housing project under section 42 of the Internal Revenue Code.

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

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

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

19 SECTION 4. The director of finance is authorized to issue  
20 general obligation bonds in the sum of \$\_\_\_\_\_ or so much  
21 thereof as may be necessary and the same sum or so much thereof  
22 as may be necessary is appropriated for fiscal year 2011-2012

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1 for low-income housing tax credit loans made pursuant to section  
2 201H-\_\_\_, Hawaii Revised Statutes, as added by section 1.

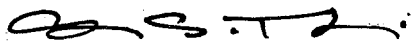
3 SECTION 5. The appropriation made for the low-income  
4 housing tax credit loans authorized by this Act shall not lapse  
5 at the end of the fiscal year for which the appropriation is  
6 made; provided that all moneys from the appropriation  
7 unencumbered as of June 30, 2013, shall lapse as of that date.

8 SECTION 6. The sum appropriated may be expended by the  
9 Hawaii housing finance and development corporation for the  
10 purpose of making low-income housing tax credit loans.

11 SECTION 7. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 8. This Act shall take effect on July 1, 2011, and  
14 shall apply to qualified low-income buildings placed in service  
15 after December 31, 2011.

16  
17  
18

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 and authorizes issuance of general obligation bonds to fund loans.

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development and Tourism

TITLE: A BILL FOR AN ACT 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), and 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.L. 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: The Department of Budget and Finance would be required to issue G.O. bonds for this purpose.

GENERAL FUND: None.

OTHER FUNDS: None.



PPBS PROGRAM

DESIGNATION: BED 160

OTHER AFFECTED

AGENCIES: Department of Budget and Finance

EFFECTIVE DATE: July 1, 2011.