
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. The legislature finds that the State has a
2 great need for affordable rental housing, as evidenced by the
3 Hawaii housing policy study, 2006 update, which projected a need
4 of approximately 17,400 affordable rental housing units by 2015.
5 The state low-income housing tax credit program, established
6 pursuant to section 235-110.8, Hawaii Revised Statutes, can be a
7 valuable financing tool to promote the development or
8 substantial rehabilitation of affordable rental housing. Under
9 the state low-income housing tax credit program, the owner of a
10 qualified low-income building who has been issued applicable
11 low-income housing tax credits typically sells the tax credits
12 to interested investors.

13 Under current market conditions, the value of state
14 low-income housing tax credits is approximately 25 cents on the
15 dollar, if the credits can be sold at all. The funds from the
16 sale of low-income housing tax credits are used to finance the
17 development or substantial rehabilitation of a qualified
18 low-income building. Thus, for every dollar of state tax



1 revenue, only 25 cents actually goes toward the development,
2 construction, or substantial rehabilitation of affordable rental
3 housing.

4 Currently, there is little demand for state low-income
5 housing tax credits, thereby stalling development and
6 rehabilitation of affordable rental housing projects due to lack
7 of project equity. Under these circumstances, the state
8 low-income housing tax credit program is not able to create or
9 preserve low-income rental housing as intended.

10 This situation could be remedied by enacting language
11 similar in effect to Section 1602 of the American Recovery and
12 Reinvestment Act of 2009, Public Law 111-5. This federal law
13 permits the exchange of federal low-income housing tax credits
14 allocated to eligible affordable rental housing projects for
15 direct funds, so that projects stalled because of the lack of
16 willing investors can be restarted. In lieu of allocating state
17 low-income housing tax credits to affordable rental housing
18 developers under the Hawaii housing finance and development
19 corporation's competitive application process, general
20 obligation bonds can be issued to fund loans to the developers.

21 The amount of the loans under the state exchange program
22 would be discounted to reflect the present value of state



1 low-income housing tax credits, which are normally claimed over
2 a ten year period, capitalized at the rate of interest on the
3 general obligation bonds used to fund the loans, and discounted
4 by seventy per cent, which is the utilization rate that the
5 department of taxation has determined for the total state
6 low-income housing tax credits that are allocated.

7 The legislature finds that monetizing the state low-income
8 housing tax credit program will provide an efficient financing
9 tool because it may more than double the amount of cash proceeds
10 available for affordable rental housing development under the
11 status quo. Meanwhile, because the amounts available for the
12 proposed loan program have been appropriately discounted, the
13 program does not have a budgetary impact to the State.
14 Additionally, forgiveness of the loan after thirty years as an
15 affordable rental housing project would provide a great
16 incentive for the development and substantial rehabilitation of
17 low-income rental housing, thus benefitting the State.

18 The legislature further finds that providing for the
19 exchange of state low-income housing tax credits for loan funds
20 is for a public purpose to promote and stimulate the development
21 and rehabilitation of much-needed affordable rental housing in
22 Hawaii.



1 The purpose of this Act is to create a mechanism to provide
2 alternative financing assistance to affordable rental housing
3 developers that are eligible for the state low-income housing
4 tax credit program.

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

8 "§201H- Low-income housing tax credit loan. (a) The
9 corporation may provide a no interest low-income housing tax
10 credit loan to an owner of a qualified low-income building that
11 has been awarded federal credits that are subject to the state
12 housing credit ceiling under section 42(h)(3)(C) of the Internal
13 Revenue Code or a subaward under Section 1602 of the American
14 Recovery and Reinvestment Act of 2009, Public Law 111-5. The
15 loan shall be in an amount equal to seventy per cent of the cash
16 value of the amount of the low-income housing credit that would
17 otherwise have been claimable with respect to the qualified low-
18 income building under section 235-110.8, for each taxable year
19 in the ten-year credit period discounted to present day value
20 and capitalized at the rate of interest on the taxable general
21 obligation bonds used to fund the loan.



1 (b) An owner that is provided a low-income housing tax
2 credit loan under this section shall not be eligible for the
3 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, Public Law 111-5. Any repayment shall be
14 payable to the housing finance revolving fund and may
15 be enforced by means of liens or other methods as the
16 corporation deems appropriate;

17 (2) The same limitations on rent and income and use
18 restrictions on buildings under an allocation of
19 housing credit dollar amount allocated pursuant to
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



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 in compliance with section 42 of the Internal Revenue
7 Code or Section 1602 of the American Recovery and Reinvestment
8 Act of 2009, Public Law 111-5, for the purpose of sustaining the
9 long-term viability of buildings funded by a no interest loan
10 under this 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 may
17 forgive the no-interest loan of 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 3. 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 taxpayer owning a qualified low-
7 income building for which a subaward under Section 1602 of the
8 American Recovery and Reinvestment Act of 2009, Public Law
9 111-5, is issued shall also be eligible for the credit provided
10 in this section.

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

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



1 be fifty per cent of the applicable percentage of the qualified
2 basis of each building located in Hawaii. The applicable
3 percentage shall be calculated as provided in section 42(b) of
4 the Internal Revenue Code.

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

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

- 18 (1) Qualified basis and qualified low-income building
19 shall be made under section 42(c);
- 20 (2) Eligible basis shall be made under section 42(d);
- 21 (3) Qualified low-income housing project shall be made
22 under section 42(g);



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

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

8 of the Internal Revenue Code.

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

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



1 [~~(g)~~] (h) The credit allowed under this section shall be
2 claimed against net income tax liability for the taxable year.
3 For the purpose of deducting this tax credit, net income tax
4 liability means net income tax liability reduced by all other
5 credits allowed the taxpayer under this chapter.

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

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

20 (i) In lieu of the credit awarded under this section for a
21 qualified low-income building that has been awarded federal
22 credits which are subject to the state housing credit ceiling



1 under Section 42(h)(3)(C) of the Internal Revenue Code or a
2 subaward under section 1602 of the American Recovery and
3 Reinvestment Act of 2009, Public Law 111-5, the taxpayer owning
4 the qualified low-income building may make a request to the
5 Hawaii housing finance and development corporation for a loan
6 under section 201H- . If the taxpayer elects to receive the
7 loan pursuant to section 201H- , the taxpayer shall not be
8 eligible for the credit under this section.

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

11 SECTION 4. The director of finance is authorized to issue
12 general obligation bonds in the sum of \$ or so much
13 thereof as may be necessary and the same sum or so much thereof
14 as may be necessary is appropriated for fiscal year 2011-2012
15 for low-income housing tax credit loans made pursuant to section
16 201H- , Hawaii Revised Statutes, as added by section 1.

17 SECTION 5. The appropriation made for the low-income
18 housing tax credit loans authorized by this Act shall not lapse
19 at the end of the fiscal year for which the appropriation is
20 made; provided that all moneys from the appropriation that are
21 unencumbered as of June 30, 2014, shall lapse as of that date.



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

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on July 1, 2011;
7 provided that this Act shall apply to qualified low-income
8 buildings placed in service after December 31, 2011.

9



Report Title:

Low-Income Housing; Tax Credits; Loans

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.
(SD1)

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