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# 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 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. Additionally, forgiveness of the loan after thirty  
12 years as an affordable rental housing project would provide a  
13 great incentive for the development and substantial  
14 rehabilitation of low-income rental housing, thus benefitting  
15 the State.

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

21       The purpose of this Act is to create a mechanism to provide  
22 alternative financing assistance to affordable rental housing



1 developers that are eligible for the state low-income housing  
2 tax credit program.

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

6 "§201H- Low-income housing tax credit loan. (a) The  
7 corporation may provide a no-interest low-income housing tax  
8 credit loan to an owner of a qualified low-income building that  
9 has been awarded federal tax credits which are subject to the  
10 state housing tax credit ceiling under section 42(h)(3)(C) (with  
11 respect to low-income housing credit) of the Internal Revenue  
12 Code, federal credits which are allocated pursuant to section  
13 42(h)(4) of the Internal Revenue Code, or a subaward under  
14 Section 1602 of the American Recovery and Reinvestment Act of  
15 2009, Public Law 111-5. The loan shall be in an amount equal to  
16 seventy per cent of the cash value of the amount of the  
17 low-income housing tax credit that would otherwise have been  
18 properly claimed with respect to the qualified low-income  
19 building under section 235-110.8, for each taxable year in the  
20 ten-year credit period discounted to present day value and  
21 capitalized at the rate of interest on the taxable general  
22 obligation bonds used to fund the loan.



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 state income tax credit under  
4 section 235-110.8.

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

8       (1) A requirement providing for acceleration and repayment  
9 on any no-interest loan under this section so as to  
10 assure that the building with respect to which the  
11 loan is made remains a qualified low-income building  
12 under section 42 of the Internal Revenue Code or  
13 Section 1602 of the American Recovery and Reinvestment  
14 Act of 2009, Public Law 111-5; provided that any  
15 repayment shall be payable to the housing finance  
16 revolving fund established pursuant to section  
17 201H-80, and may be enforced by means of liens or  
18 other methods as the corporation deems appropriate;

19       (2) The same limitations on rent and income and use  
20 restrictions as under an allocation of a housing  
21 credit dollar amount allocated under section 42 of the  
22 Internal Revenue Code; and



1       (3) The payment of reasonable fees for the corporation to  
2       perform or cause to be performed asset management  
3       functions to ensure compliance with section 42 of the  
4       Internal Revenue Code and the long-term viability of  
5       buildings funded by any no-interest loan under this  
6       section.

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

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

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



1        (g) For purposes of this section "qualified low-income  
2 building" shall have the same meaning as used in section  
3 42(c)(2) of the Internal Revenue Code."

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

6        "**§235-110.8 Low-income housing tax credit.** (a) Section  
7 42 (with respect to low-income housing credit) of the Internal  
8 Revenue Code shall be operative for the purposes of this chapter  
9 as provided in this section. The owner of a qualified  
10 low-income building that has been awarded a subaward under  
11 Section 1602 of the American Recovery and Reinvestment Act of  
12 2009, Public Law 111-5, shall also be eligible for the credit  
13 provided in this section.

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



1 taxpayer claims a federal low-income housing tax credit pursuant  
2 to section 42 of the Internal Revenue Code.

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

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

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





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

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

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

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

11 of the Internal Revenue Code.

12 (e) As provided in section 42(e) [~~7~~] of the Internal  
13 Revenue Code, rehabilitation expenditures shall be treated as  
14 separate new building and their treatment under this section  
15 shall be the same as in section 42(e). The definitions and  
16 special rules relating to credit period in section 42(f) of the  
17 Internal Revenue Code and the definitions and special rules in  
18 section 42(i) of the Internal Revenue Code shall be operative  
19 for the purposes of this section.

20 (f) The state housing credit ceiling under section 42(h)  
21 of the Internal Revenue Code shall be zero for the calendar year  
22 immediately following the expiration of the federal low-income



1 housing tax credit program and for any calendar year thereafter,  
2 except for the carryover of any credit ceiling amount for  
3 certain projects in progress which, at the time of the federal  
4 expiration, meet the requirements of section 42[-] of the  
5 Internal Revenue Code.

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

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



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

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

17 ~~[(h)]~~ (i) 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



1 for the purpose of low-income housing tax credit loans made  
2 pursuant to section 201H- , Hawaii Revised Statutes.

3 SECTION 5. The sum appropriated shall be expended by the  
4 Hawaii housing finance and development corporation for the  
5 purposes of this Act.

6 SECTION 6. The appropriation made for the low-income  
7 housing tax credit loans authorized by this Act shall not lapse  
8 at the end of the fiscal biennium for which the appropriation is  
9 made; provided that all moneys from the appropriation  
10 unencumbered as of June 30, 2014, shall lapse as of that date.

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;  
14 provided that this Act shall apply to qualified low-income  
15 buildings placed in service after December 31, 2011.

16



**Report Title:**

Low-Income Housing Tax Credits; Grant Exchange Program;  
Appropriation

**Description:**

Establishes a program for granting no-interest 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 the loans. Applies to qualified low-income buildings placed in service after December 31, 2011. (SD1)

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