

ACT 158

H.B. NO. 960

A Bill for an Act Relating to Low-Income Housing.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

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

The legislature also finds that because of the weakened value of state low-income housing tax credits, the program is not able to effectively produce or preserve sorely-needed rental housing. Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, a federal program that has al-

lowed for the exchange of federal tax credits awarded under a state's low-income housing tax credit volume cap for direct loans, has stimulated the development of rental housing projects across the nation. A similar state program allowing for the exchange of state low-income housing credits for direct loans would stimulate rental housing projects in Hawaii.

The legislature also finds that forgiveness of the amount under the proposed direct loans after thirty years for an affordable rental housing project would provide an additional incentive to stimulate affordable rental housing development, and is therefore in the public interest.

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

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

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

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

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

- (1) A requirement providing for acceleration and repayment on any no-interest loan under this section to assure that the building with respect to which the loan is made remains a qualified low-income building under section 42 of the Internal Revenue Code or Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. Any such repayment shall be payable to the housing finance revolving fund and may be enforced by means of liens or other methods as the corporation deems appropriate;
- (2) The same limitations on rent, income, and use restrictions as applied under an allocation of a housing credit dollar amount allocated under section 42 of the Internal Revenue Code; and
- (3) The payment of reasonable fees for the corporation to perform or cause to be performed asset management functions to ensure compliance with section 42 of the Internal Revenue Code and the long-term viability of buildings funded by any no-interest loan under this section.

(d) The corporation shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code or Section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, to

sustain the long-term viability of buildings funded by a no-interest loan under this section.

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

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

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

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

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

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

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

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

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

- (1) Qualified basis and qualified low-income building shall be made under section 42(c);
- (2) Eligible basis shall be made under section 42(d);
- (3) Qualified low-income housing project shall be made under section 42(g);
- (4) Recapture of credit shall be made under section 42(j), except that the tax for the taxable year shall be increased under section 42(j)(1) only with respect to credits that were used to reduce state income taxes; and
- (5) Application of at-risk rules shall be made under section 42(k);

of the Internal Revenue Code.

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

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

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

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

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

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

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

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved June 23, 2011.)

#### Note

1. Edited pursuant to HRS §23G-16.5.