

AMENDED IN ASSEMBLY MARCH 2, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2058

**Introduced by Assembly Members Gabriel and Friedman
(Coauthors: Assembly Members Bauer-Kahan, Bloom, Bonta,
Carrillo, Gallagher, Eduardo Garcia, Gipson, Gloria,
Jones-Sawyer, Kamlager, Lackey, Low, O'Donnell, Robert Rivas,
Santiago, Wicks, and Wood)**

(Coauthors: Senators Lena Gonzalez and Wilk)

February 4, 2020

An act to add and repeal Sections 17057.7 and 23610.6 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2058, as amended, Gabriel. Income taxes: credits: low-income housing.

(1) The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, would allow a credit against those taxes to a taxpayer that is transferred, and allocated, credits pursuant to the sale of a multifamily rental housing development or mobilehome park to a qualified developer, as defined, that has received a credit reservation from the California Tax Credit Allocation Committee, in specified amounts. The bill would limit the aggregate amount of credit that may be allocated by the committee to \$500,000,000. The bill would require the credits to be reserved on a first-come-first-served basis.

(2) Existing law requires any bill authorizing a new tax credit to contain, among other things, specific goals, purposes, and objectives that the tax credit will achieve, detailed performance indicators, and data collection requirements.

This bill would include additional information required for any bill authorizing a new income tax credit.

(3) This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17057.7 is added to the Revenue and
2 Taxation Code, to read:

3 17057.7. (a) (1) For taxable years beginning on or after
4 January 1, 2021, and before January 1, 2026, there shall be allowed
5 to a taxpayer a credit against the “net tax,” as defined in Section
6 17039, pursuant to a credit reservation made by the committee for
7 a qualified developer and a credit transfer to the taxpayer by the
8 qualified developer, in an amount determined pursuant to paragraph
9 (2).

10 (2) (A) The credit shall not exceed one million dollars
11 (\$1,000,000) or the sum of both of the following, whichever is
12 less:

13 (i) Fifty percent of the federal capital gains taxes to be paid by
14 the taxpayer based on the gains recognized for the sale of property
15 to the qualified developer.

16 (ii) Fifty percent of the state income taxes paid by the taxpayer
17 derived from the capital gains recognized for the sale of the
18 property to the qualified developer.

19 (B) (i) Fifty percent of the estimated credit amount shall be
20 allocated to the taxpayer in the taxable year in which the sale of
21 the property is made to the qualified developer.

22 (ii) The remainder of the estimated credit amount shall be
23 allocated to the taxpayer in the taxable year following the sale of
24 the property. The taxpayer shall demonstrate to the committee the
25 actual amount of federal and state income taxes paid that were
26 derived from the sale of the property to the qualified developer
27 and the credit amount allocated to the taxpayer pursuant to this

1 clause shall be reduced if the actual taxes paid are less than the
2 estimated taxes paid.

3 (b) The qualified developer shall apply for a credit reservation
4 of up to one million dollars (\$1,000,000).

5 (c) The estimated amount of credit transferred to the taxpayer
6 from a qualified developer shall be established at the close of
7 escrow and included in the closing or transaction documents.

8 (d) In the case where the credit allowed by subparagraph (A)
9 of paragraph (2) of subdivision (a) exceeds the “net tax,” the excess
10 may be carried over to reduce the “net tax” in the following taxable
11 year, and succeeding years if necessary, until the credit is
12 exhausted.

13 (e) For purposes of this section, the committee shall do all of
14 the following:

15 (1) Establish a procedure for a qualified developer to ~~file with~~
16 ~~the committee a written application for the~~ *apply for and receive*
17 *a reservation of a credit.*

18 (2) Establish *minimum* criteria for approving an application to
19 reserve tax credits, including, but not limited to, all of the
20 following:

21 ~~(A) Whether the~~ *The* qualified developer ~~has~~ *shall have* a
22 successful record of using tax credits or other public funding
23 sources to preserve or acquire affordable housing in the state.

24 ~~(B) The number of units on the property to maximize the number~~
25 ~~of units of affordable housing preserved and developed through~~
26 ~~the credit.~~

27 ~~(C) Whether the~~

28 ~~(B) The credit will~~ *shall not* be used to acquire an assisted
29 housing development, as defined in Section 65863.10 of the
30 Government Code. ~~The committee shall not approve an application~~
31 ~~to reserve tax credits if the credit will be used to acquire an assisted~~
32 ~~housing development and Code, for which~~ the development’s rent
33 and income level restrictions will terminate or the federally insured
34 mortgage or rent subsidy contract on the property is eligible for
35 prepayment or termination more than five years after the date of
36 acquisition.

37 ~~(D) Whether the~~

38 ~~(C) The~~ qualified developer ~~has other tax credit reservations~~
39 ~~pursuant to this section and Section 23610.6. A qualified developer~~
40 shall not hold more than three reservations under this section and

1 Section 23610.6 at any time. Once the qualified developer transfers
 2 a credit to a taxpayer, the qualified developer does not hold that
 3 tax credit reservation.

4 *(D) The qualified developer agrees to renew all project-based*
 5 *rental subsidies for the maximum term available and to seek*
 6 *additional renewals throughout the term of the regulatory*
 7 *agreement, if applicable.*

8 *(E) The qualified developer agrees not to evict tenants other*
 9 *than for good cause, as that term is used in Section 42 of Title 26*
 10 *of the United States Code.*

11 *(F) The qualified developer agrees to comply with tenant*
 12 *selection and lease requirements established by the committee.*

13 (3) Enter into credit reservation agreements with qualified
 14 developers. The committee shall reserve credits on a
 15 first-come-first-served basis to qualified developers who meet the
 16 threshold criteria established by the committee. Credit reservation
 17 agreements shall include the amount of credit reserved to the
 18 qualified developer and the amount of time, based on criteria
 19 adopted by the committee, in which the qualified developer shall
 20 transfer the credit to a taxpayer. The criteria to determine a timeline
 21 in which a credit must be transferred shall take into account market
 22 conditions in the state.

23 (4) Allocate tax credits to taxpayers and establish a procedure,
 24 in consultation with the Franchise Tax Board, to confirm the credit
 25 amount allocated to a taxpayer.

26 (5) Adopt all other rules and regulations necessary to implement
 27 this section.

28 (f) A taxpayer that receives a credit allocation shall provide the
 29 committee with the taxpayer’s tax returns for the taxable year in
 30 which the taxpayer received the credit allocation and for the
 31 subsequent four taxable years.

32 (g) The aggregate amount of credits that may be allocated
 33 pursuant to this section and Section 23610.6 is five hundred million
 34 dollars (\$500,000,000). Any remaining credits following the
 35 reduction made pursuant to clause (ii) of subparagraph (B) of
 36 paragraph (2) of subdivision (a) shall be available for rereservation
 37 and reallocation by the committee.

38 (h) For purposes of this section, the following terms are defined
 39 as follows:

1 (1) “Committee” means the California Tax Credit Allocation
2 Committee.

3 (2) “Department” means the Department of Housing and
4 Community Development.

5 ~~(2)~~

6 (3) “Eligible nonprofit corporation” means a California nonprofit
7 corporation whose primary activity is the development and
8 preservation of affordable rental housing, as determined by the
9 committee.

10 (4) “Lower income households” has the same meaning as
11 defined in Section 50079.5 of the Health and Safety Code.

12 ~~(3)~~

13 (5) “Qualified developer” means a local public entity, as defined
14 in Section 50079 of the Health and Safety Code, an eligible
15 nonprofit corporation, a limited partnership in which the managing
16 general partner is an eligible nonprofit corporation, ~~or a limited~~
17 liability company in which the managing member is an eligible
18 nonprofit corporation, ~~acquiring a mobilehome park or~~ or a resident
19 organization, as defined in subdivision (l) of Section 50781 of the
20 Health and Safety Code, that meets any of the following:

21 (A) Is acquiring a mobilehome park in the state and has secured
22 a loan from the department pursuant to Section 50783 or 50784.5
23 of the Health and Safety Code.

24 (B) Is acquiring a mobilehome park, in the state, in which at
25 least 50 percent of the current residents are lower income
26 households and for which the qualified developer agrees to enter
27 into a regulatory agreement with the committee for a minimum of
28 55 years that requires both of the following:

29 (i) All vacant spaces shall be rented at a space rent that does
30 not exceed ___ percent of maximum rent limits established by the
31 committee at 60 percent of the area median income.

32 (ii) The space rent for existing residents at the time of the
33 qualified developer’s acquisition of the property, both during the
34 12 months preceding the acquisition and during the term of the
35 regulatory agreement, shall not increase more than 5 percent in
36 any 12-month period.

37 (C) Is acquiring a multifamily rental housing development of
38 five or more dwelling units in the state and entering into a
39 regulatory agreement, with the committee for that ~~development or~~
40 ~~mobilehome park, development~~, that requires, for a minimum of

1 55 years, that all vacant housing meet both of the following
2 requirements:

3 ~~(A)~~

4 (i) Be rented to low-income households, so no household earns
5 more than 80 percent of the area median income at initial
6 occupancy and the average income limit is no more than 60 percent
7 of the area median income.

8 ~~(B)~~

9 (ii) Be rented to low-income households at affordable rents that
10 do not exceed maximum rent limits established by the committee
11 at 80 percent of the area median income. The average affordable
12 rent shall not exceed 60 percent of the area median income.

13 (6) *“Space rent” means the rent charged for occupancy of a*
14 *space in a mobilehome park. “Space rent” does not include the*
15 *rent charged for occupancy of a mobilehome or other structure*
16 *on that space.*

17 ~~(4)~~

18 (7) *“Vacant housing” means dwelling units, mobilehomes, or*
19 *mobilehome spaces units that are vacant at the time the property*
20 *is sold to the qualified developer and dwelling units, mobilehomes,*
21 *or mobilehome spaces units that become vacant after the property*
22 *has been sold to the qualified developer.*

23 (8) *“Vacant spaces” means spaces in a mobilehome park that*
24 *are vacant at the time the property is sold to the qualified developer*
25 *and spaces in a mobilehome park that become vacant after the*
26 *property has been sold to the qualified developer.*

27 (i) Rules and regulations adopted by the committee to implement
28 this section are exempt from the Administrative Procedure Act
29 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
30 Division 3 of Title 2 of the Government Code).

31 (j) This section shall remain in effect only until December 31,
32 2026, and as of that date is repealed.

33 SEC. 2. Section 23610.6 is added to the Revenue and Taxation
34 Code, to read:

35 23610.6. (a) (1) For taxable years beginning on or after
36 January 1, 2021, and before January 1, 2026, there shall be allowed
37 to a taxpayer a credit against the “tax,” as defined in Section 23036,
38 pursuant to a credit reservation made by the committee for a
39 qualified developer and a credit transfer to the taxpayer by the

1 qualified developer, in an amount determined pursuant to paragraph
2 (2).

3 (2) (A) The credit shall not exceed one million dollars
4 (\$1,000,000) or the sum of both of the following, whichever is
5 less:

6 (i) Fifty percent of the federal capital gains taxes to be paid by
7 the taxpayer based on the gains recognized for the sale of property
8 to the qualified developer.

9 (ii) Fifty percent of the state income taxes paid by the taxpayer
10 derived from the capital gains recognized for the sale of the
11 property to the qualified developer.

12 (B) (i) Fifty percent of the estimated credit amount shall be
13 allocated to the taxpayer in the taxable year in which the sale of
14 the property is made to the qualified developer.

15 (ii) The remainder of the estimated credit amount shall be
16 allocated to the taxpayer in the taxable year following the sale of
17 the property. The taxpayer shall demonstrate to the committee the
18 actual amount of federal and state income taxes paid that were
19 derived from the sale of the property to the qualified developer
20 and the credit amount allocated to the taxpayer pursuant to this
21 clause shall be reduced if the actual taxes paid are less than the
22 estimated taxes paid.

23 (b) The qualified developer shall apply for a credit reservation
24 of up to one million dollars (\$1,000,000).

25 (c) The estimated amount of credit transferred to the taxpayer
26 from a qualified developer shall be established at the close of
27 escrow and included in the closing or transaction documents.

28 (d) In the case where the credit allowed by subparagraph (A)
29 of paragraph (2) of subdivision (a) exceeds the “tax,” the excess
30 may be carried over to reduce the “tax” in the following taxable
31 year, and succeeding years if necessary, until the credit is
32 exhausted.

33 (e) For purposes of this section, the committee shall do all of
34 the following:

35 (1) Establish a procedure for a qualified developer to ~~file with~~
36 ~~the committee a written application for the~~ *apply for and receive*
37 *a reservation of a credit.*

38 (2) Establish *minimum* criteria for approving an application to
39 reserve tax credits, including, but not limited to, all of the
40 following:

1 (A) ~~Whether the~~*The* qualified developer ~~has~~ *shall have* a
 2 successful record of using tax credits or other public funding
 3 sources to preserve or acquire affordable housing in the state.

4 ~~(B) The number of units on the property to maximize the number~~
 5 ~~of units of affordable housing preserved and developed through~~
 6 ~~the credit.~~

7 ~~(C) Whether the~~
 8 ~~(B) The credit will~~ *shall not* be used to acquire an assisted
 9 housing development, as defined in Section 65863.10 of the
 10 Government Code. ~~The committee shall not approve an application~~
 11 ~~to reserve tax credits if the credit will be used to acquire an assisted~~
 12 ~~housing development and Code, for which the development's rent~~
 13 ~~and income level restrictions will terminate or the federally insured~~
 14 ~~mortgage or rent subsidy contract on the property is eligible for~~
 15 ~~prepayment or termination more than five years after the date of~~
 16 ~~acquisition.~~

17 ~~(D) Whether the~~
 18 ~~(C) The qualified developer has other tax credit reservations~~
 19 ~~pursuant to this section and Section 17057.7. A qualified developer~~
 20 ~~shall not hold more than three reservations under this section and~~
 21 ~~Section 17057.7 at any time. Once the qualified developer transfers~~
 22 ~~a credit to a taxpayer, the qualified developer does not hold that~~
 23 ~~tax credit reservation.~~

24 ~~(D) The qualified developer agrees to renew all project-based~~
 25 ~~rental subsidies for the maximum term available and to seek~~
 26 ~~additional renewals throughout the term of the regulatory~~
 27 ~~agreement, if applicable.~~

28 ~~(E) The qualified developer agrees not to evict tenants other~~
 29 ~~than for good cause, as that term is used in Section 42 of Title 26~~
 30 ~~of the United States Code.~~

31 ~~(F) The qualified developer agrees to comply with tenant~~
 32 ~~selection and lease requirements established by the committee.~~

33 (3) Enter into credit reservation agreements with qualified
 34 developers. The committee shall reserve credits on a
 35 first-come-first-served basis to qualified developers who meet the
 36 threshold criteria established by the committee. Credit reservation
 37 agreements shall include the amount of credit reserved to the
 38 qualified developer and the amount of time, based on criteria
 39 adopted by the committee, in which the qualified developer shall
 40 transfer the credit to a taxpayer. The criteria to determine a timeline

1 in which a credit must be transferred shall take into account market
2 conditions in the state.

3 (4) Allocate tax credits to taxpayers and establish a procedure,
4 in consultation with the Franchise Tax Board, to confirm the credit
5 amount allocated to a taxpayer.

6 (5) Adopt all other rules and regulations necessary to implement
7 this section.

8 (f) A taxpayer that receives a credit allocation shall provide the
9 committee with the taxpayer's tax returns for the taxable year in
10 which the taxpayer received the credit allocation and for the
11 subsequent four taxable years.

12 (g) The aggregate amount of credits that may be allocated
13 pursuant to this section and Section 17057.7 is five hundred million
14 dollars (\$500,000,000). Any remaining credits following the
15 reduction made pursuant to clause (ii) of subparagraph (B) of
16 paragraph (2) of subdivision (a) shall be available for rereservation
17 and reallocation by the committee.

18 (h) For purposes of this section, the following terms are defined
19 as follows:

20 (1) "Committee" means the California Tax Credit Allocation
21 Committee.

22 (2) "*Department*" means the Department of Housing and
23 Community Development.

24 ~~(2)~~

25 (3) "Eligible nonprofit corporation" means a California nonprofit
26 corporation whose primary activity is the development and
27 preservation of affordable rental housing, as determined by the
28 committee.

29 (4) "*Lower income households*" has the same meaning as
30 defined in Section 50079.5 of the Health and Safety Code.

31 ~~(3)~~

32 (5) "Qualified developer" means a local public entity, as defined
33 in Section 50079 of the Health and Safety Code, an eligible
34 nonprofit corporation, a limited partnership in which the managing
35 general partner is an eligible nonprofit corporation, ~~or~~ a limited
36 liability company in which the managing member is an eligible
37 nonprofit corporation, ~~acquiring~~ or a resident organization, as
38 defined in subdivision (1) of Section 50781 of the Health and Safety
39 Code, that meets any of the following:

1 (A) *Is acquiring a mobilehome park ~~or~~ in the state and has*
2 *secured a loan from the department pursuant to Section 50783 or*
3 *50784.5 of the Health and Safety Code.*

4 (B) *Is acquiring a mobilehome park in the state in which at least*
5 *50 percent of the current residents are lower income households*
6 *and for which the qualified developer agrees to enter into a*
7 *regulatory agreement with the committee for a minimum of 55*
8 *years that requires both of the following:*

9 (i) *All vacant spaces shall be rented at a space rent that does*
10 *not exceed ___ percent of maximum rent limits established by the*
11 *committee at 60 percent of the area median income.*

12 (ii) *The space rent for existing residents at the time of the*
13 *qualified developer’s acquisition of the property, both during the*
14 *12 months preceding the acquisition and during the term of the*
15 *regulatory agreement, shall not increase more than 5 percent in*
16 *any 12-month period.*

17 (C) *Is acquiring a multifamily rental housing development of*
18 *five or more dwelling units in the state and entering into a*
19 *regulatory agreement, with the committee for that ~~development or~~*
20 *~~mobilehome park, development,~~ that requires, for a minimum of*
21 *55 years, that all vacant housing meet both of the following*
22 *requirements:*

23 ~~(A)~~

24 (i) *Be rented to low-income households, so no household earns*
25 *more than 80 percent of the area median income at initial*
26 *occupancy and the average income limit is no more than 60 percent*
27 *of the area median income.*

28 ~~(B)~~

29 (ii) *Be rented to low-income households at affordable rents that*
30 *do not exceed maximum rent limits established by the committee*
31 *at 80 percent of the area median income. The average affordable*
32 *rent shall not exceed 60 percent of the area median income.*

33 (6) *“Space rent” means the rent charged for occupancy of a*
34 *space in a mobilehome park. “Space rent” does not include the*
35 *rent charged for occupancy of a mobilehome or other structure*
36 *on that space.*

37 ~~(4)~~

38 (7) *“Vacant housing” means dwelling ~~units, mobilehomes, or~~*
39 *~~mobilehome spaces~~ units that are vacant at the time the property*
40 *is sold to the qualified developer and dwelling ~~units, mobilehomes,~~*

1 ~~or mobilehome spaces~~ *units* that become vacant after the property
2 has been sold to the qualified developer.

3 (8) *“Vacant spaces” means spaces in a mobilehome park that*
4 *are vacant at the time the property is sold to the qualified developer*
5 *and spaces in a mobilehome park that become vacant after the*
6 *property has been sold to the qualified developer.*

7 (i) Rules and regulations adopted by the committee to implement
8 this section are exempt from the Administrative Procedure Act
9 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
10 Division 3 of Title 2 of the Government Code).

11 (j) This section shall remain in effect only until December 31,
12 2026, and as of that date is repealed.

13 SEC. 3. For purposes of complying with Section 41 of the
14 Revenue and Taxation Code, the Legislature finds and declares
15 the following with respect to Sections 17057.7 and 23610.6 of the
16 Revenue and Taxation Code, as added by this act, hereafter referred
17 to as “the tax credits”:

18 (a) The specific goals, purposes, and objectives that the tax
19 credits will achieve are as follows:

20 (1) Preserving the affordability of existing affordable housing
21 and mobilehome parks at risk of converting to market-rate housing
22 as subsidies are set to expire.

23 (2) Preserving the affordability of unrestricted, naturally
24 occurring affordable housing and mobilehome parks where market
25 pressures threaten to make housing costs unaffordable to
26 low-income households.

27 (3) Preventing the displacement of low-income households that
28 would otherwise be caused by the loss of affordability in at-risk
29 restricted or in unrestricted housing and mobilehome parks.

30 (b) Detailed performance indicators for the Legislature to use
31 in determining whether the tax credits allowed by this act meet
32 those goals, purposes, and objectives are as follows:

33 (1) The number of developers allowed a tax credit pursuant to
34 Sections 17057.7 and 23610.6 of the Revenue and Taxation Code,
35 as added by this act.

36 (2) The number of homes remaining affordable to low-income
37 households as a result of a sales transaction involving a tax credit
38 pursuant to Sections 17057.7 and 23610.6 of the Revenue and
39 Taxation Code, as added by this act.

1 (c) The Legislative Analyst’s Office shall, on an annual basis
2 beginning January 1, 2022, and each January 1 thereafter until
3 January 1, 2027, collaborate with the California Tax Credit
4 Allocation Committee to review the effectiveness of the tax credits.
5 The review shall include, but not be limited to, the metrics
6 described above.

7 (d) The data collection requirements for determining whether
8 the tax credits are meeting, failing to meet, or exceeding those
9 specific goals, purposes, and objectives are as follows:

10 (1) To assist the Legislature in determining whether the tax
11 credits allowed by this act meet the goals, purposes, and objectives
12 specified in subdivision (a), and in carrying out their duties under
13 subdivision (c), the Legislative Analyst’s Office may request
14 information from the California Tax Credit Allocation Committee.

15 (2) The California Tax Credit Allocation Committee shall
16 provide any data requested by the Legislative Analyst’s Office
17 pursuant to this subdivision.

18 SEC. 4. This act provides for a tax levy within the meaning of
19 Article IV of the California Constitution and shall go into
20 immediate effect.