

SUMMARY ANALYSIS OF AMENDED BILL

Author: Lowenthal Analyst: Angela Raygoza Bill Number: SB 713
 Related Bills: See Prior Analysis Telephone: 845-5163 Amended Date: June 27, 2007
 Attorney: Dan Biedler Sponsor: _____

SUBJECT: Farmworker Housing Credit/Partner's Distributive Share of Credit is Determined By Partnership Agreement

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended June 4, 2007.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 4, 2007, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would do the following:

- consolidate the farmworker housing tax credit (FHTC) program into the state low-income housing tax credit (LIHC) program, and
- make changes to how the state LIHC may be allocated to partners.

SUMMARY OF AMENDMENTS

The June 27, 2007, amendments replaced the term “distributed” with “allocated” and made other nonsubstantive changes. The amendments resolved the department’s technical consideration as discussed in the department’s analysis of the bill as amended June 4, 2007. As a result of the amendments, the “This Bill” discussion has been revised. The policy concern remains and has been included below for convenience. Except for the discussion in this analysis, the remainder of the department’s analysis of the bill as amended June 4, 2007, still applies.

Board Position:	Legislative Director	Date
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POSITION

Pending.

ANALYSIS

THIS BILL

This bill would do the following:

- Repeal the farmworker housing assistance program from the Health and Safety Code.
- Add new language to the Health and Safety Code requiring the farmworker housing credit to be allocated in the same manner as the LIHC.
- Specify a minimum amount of credit that should be set aside for projects housing farmworker households that is in addition to the LIHC.
- Define “agricultural worker” or “farmworker” as specified in the Labor Code.
- Require that shares of the LIHC allocated on or after January 1, 2008, be allocated to partners based on the partnership agreement, regardless of how the federal LIHC is allocated or whether the allocation of the credit under the terms of the agreement has substantial economic effect within the meaning of Section 704 (b) of the Internal Revenue Code.

POLICY CONCERNS

This bill would disconnect ownership of the property from eligibility for the credit, thus severing the credit from a taxpayer’s economic interest in the profits and losses of the project. Because the Committee could issue this credit to any partnership, corporation, or business entity, this action could lead to allocations for tax shelter purposes. For example, investors would be able to “buy” rights to farmworker housing credits through the purchase of a partnership share. When all of the credits, which could exceed the cost of investment, have been utilized, the investor could walk away from the partnership with negative income to apply against other partnership income. Thus, the investor would benefit twice from the arrangement: first by use of the credit and second by the income loss. As discussed in the department’s analysis of the bill as amended on April 9, 2007, Governor Davis vetoed a similar proposed change to the low-income housing credit on September 30, 2000, citing concern with “abuses that may arise” from the severance of economic interest in the project and the potential for allocations being obtained for tax shelter purposes. See Attachment A.

LEGISLATIVE STAFF CONTACT

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ATTACHMENT A

BILL NUMBER: AB 1903
VETOED DATE: 09/30/2000

Sep 30 2000

To Members of the California Assembly:

I am returning Assembly Bill 1903 without my signature.

This bill would allow the State low-income housing credit to be distributed among partners pursuant to a partnership agreement, even if the allocation of that credit to the partner under that agreement does not have substantial economic effect.

Although I am aware this bill could increase the value of the low-income housing credits by allowing the credit to be targeted to those entities that can use it, I am concerned about the possible abuses that may arise. Specifically, since this bill would allow a credit to be severed from the economic interest each partner has in the profits and losses of the project, it could lead to allocations for tax shelter purposes.

For example, under this bill, investors would be able to "buy" rights to low-income housing credits through the purchase of a partnership share. When they had utilized all of the credits (which could exceed the cost of their investment), they could walk away from the partnership investment and have a negative basis in the investment. This would allow them to write off the amount of the negative basis against other income. Thus, the investor would benefit twice from the arrangement—the use of the credit and the negative basis.

I am committed to expanding housing opportunities for all Californians. The 2000 Budget Act includes over \$580 million General Fund in support for housing, with almost 50% of this amount dedicated toward low-and moderate-income housing. For the reasons I have stated above, I am returning AB 1903 unsigned.

Sincerely,

GRAY DAVIS