Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Beall	Analyst:	Jessica Deitchman	Bill Number:	SB 377
Related Bills:	See Prior Analysis	Telephone:	845-6310	Amended Date:	June 1, 2015
		Attorney:	Bruce Langston	Sponsor	

SUBJECT:	Low-Income Housing Credit

SUMMARY

This bill would modify the existing Low-Income Housing Credit (LIHC) to remove the sunset date, and to add provisions to allow the credit to be sold.

This analysis only addresses the provisions of this bill that impact the department's programs and operations.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The June 1, 2015, amendments added provisions that would require the California Tax Credit Allocation Committee (Allocation Committee) to enter into an agreement with the Franchise Tax Board (FTB) to pay any costs incurred by the FTB in the administration of the bill.

As a result of these amendments, two technical considerations have been created and the "This Bill" and "Fiscal Impact" sections of the department's analysis of the bill as amended April 29, and May 12, 2015, have been revised. For convenience, the "Implementation Considerations" and the "Economic Impact" sections are restated and the "Support/Opposition" section is updated, as provided below. The remainder of the department's analysis of the bill as amended April 29, and May 12, 2015, still applies.

THIS BILL

This bill would extend in perpetuity the requirement that the LIHC allocation to partners be based upon the partnership agreement, regardless of how the federal LIHC is allocated to the partners, or whether the allocation has substantial economic effect, as specified.

Additionally, for a project that receives a preliminary reservation beginning on or after January 1, 2016, a taxpayer may make an irrevocable election in its application to the Allocation Committee to sell all or any portion of any LIHC allowed to one or more unrelated parties for each taxable year in which the LIHC is allowed for consideration that is not less than 80 percent of the amount of the credit. Sales of the LIHC would be subject to the following:

- The taxpayer that originally receives the credit would report to the Allocation Committee within 10 days of the sale, in the form and manner specified by the Allocation Committee, all required information regarding the purchase and sale of the credit, including:

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  - The social security or other taxpayer identification number of the unrelated party to whom the credit has been sold,
  - The face amount of the credit sold, and
  - The amount of consideration received by the taxpayer for the sale of the credit.
- A credit could be sold to more than one unrelated party, and could not be resold by the unrelated party to another taxpayer or other party.
- The taxpayer that originally receives the credit that is sold would remain solely liable for all obligations and liabilities imposed on the taxpayer with respect to the credit, none of which would apply to any party to whom the credit has been sold or subsequently transferred.
- Parties who purchase credits would be entitled to utilize the purchased credits in the same manner the taxpayer that originally received the credit could utilize them.
- A taxpayer could not sell a credit if the taxpayer was allowed the credit on any tax return of the taxpayer.

The taxpayer, with the approval of the Executive Director of the Allocation Committee, may rescind the election to sell all or any portion of the credit allowed if the consideration for the credit falls below 80 percent of the amount of the credit after the Allocation Committee reservation.

The bill would require the Allocation Committee to provide an annual listing to the FTB, in a form agreed to by the FTB and the Allocation Committee, of the taxpayers that have sold or purchased a credit allowed by this bill.

The bill would require the Allocation Committee to enter into an agreement with the FTB to pay any costs incurred by the FTB in the administration of the bill's provisions authorizing a sale of all or any portion of the LIHC to an unrelated party.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

Because the bill fails to specify otherwise, the FTB would be subject to the rulemaking procedures required under the Administrative Procedures Act (APA).[1] Following these procedures may delay the immediate implementation of this bill. To prevent any delay, it is recommended that the author add a provision exempting the FTB from the APA when the FTB is prescribing rules, guidelines, or procedures necessary or appropriate to carry out the purpose of this bill.

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[1] Government Code section 11340 et seq.

TECHNICAL CONSIDERATIONS

For grammatical accuracy and consistency, the following technical changes are recommended:

- On page 24, line 29 and on page 37, line 22, after “to” strikeout “the”
- On page 40, line 16, after “Franchise” strikeout “board” and insert “Board”

FISCAL IMPACT

This bill would require the department to be reimbursed for costs incurred as a result of implementing this bill; however, we anticipate the department’s costs to be insignificant.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact:

Estimated Revenue Impact of SB 377 As Amended June 1, 2015 Assumed Enactment After June 30, 2015		
2015-16	2016-17	2017-18
+ $170,000	+ $450,000	- $250,000

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill. In addition, this estimate only reflects the revenue impact to income and franchise taxes.

Revenue Discussion

Using LIHC allocation data from the Allocation Committee, it is estimated that approximately $100 million, after inflation indexing, would be available for allocation in 2016. Based on current credit awards and usage, it is estimated that 10 percent, or $10 million, of the annual credits would be sold, with the remaining 90 percent used against income, franchise, and insurance taxes. It is assumed that the ability to sell the credit would result in a timing difference. However, because credits sold cannot be used until the building is put into service, the acceleration of credit use relative to current law will not begin until 2018, two years after the credit allocation. The revenue impact of the accelerated credit usage would not be fully phased in until taxable year 2021 since credits must be taken over a four year period. For credits that are sold, it is assumed that the taxpayer would have additional capital gain income, in the amount of 80 percent of the value of the credits sold. This capital gain income must be claimed in the year the credits are purchased, which results in a positive revenue impact for the 2016 and 2017 taxable years.

Combining the accelerated credit usage (relative to current law) and the offsetting capital gains tax, it is estimated the average annual revenue loss for income and franchise tax would be approximately $1 million in 2018, increasing to $5.8 million in 2021. Current usage indicates that 98 percent would be claimed by corporations and the remaining 2 percent would be claimed by personal income taxpayers. The tax year estimates are converted to fiscal year estimates, and then rounded and reflected in the table above.

SUPPORT/OPPOSITION[2]

Support: California Tax Credit Allocation Committee, State Treasurer John Chiang, Burbank Housing Management Corporation, C&C Development Corporation, California Association of Housing Authorities, California Association of Local Housing Finance Agencies, California Coalition for Rural Housing, California Commission on Aging, California Housing Partnership Corporation, California Institute for Rural Studies, California Land Title Association, Charities Housing, Chinatown Community Development Center, Christian Church Homes, City Heights Community Development Corporation, City of Morgan Hill, Community Action North Bay, Community Economics, EAH Housing, East Bay Asian Local Development Corporation, East Bay Housing Organizations, Eden Housing, Housing California, Integrity Housing, Leadership Counsel for Justice and Accountability, Linc Housing, MidPen Housing Corporation, Mogavero Notestine Associates, Monterey County Supervisor Jane Parker, Mutual Housing California, Northern California Community Loan Fund, Paulett Taggart Architects, Peoples' Self-Help Housing, Public Interest Law Project, Rural Communities Housing Development Corporation, San Diego Habitat for Humanity, San Diego Housing Federation, San Diego-Imperial Counties Labor Council, San Luis Obispo Housing Trust Fund, Satellite Affordable Housing Associates, Self-Help Enterprises, Sierra Business Council, Sonoma County Task Force for the Homeless, Tenderloin Neighborhood Development Corporation, Terrex Development Corporation, The Hampstead Companies, The Nonprofit Housing Association of Northern California, Wakeland Housing and Development Corporation, Two Individuals.

Opposition: None provided.

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[2] As provided in the Senate Floor Analysis, dated June 1, 2015.