Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Hernandez, et al.	Analyst:	Jessica Deitchman	Bill Number:	AB 2140
Related Bills:	See Legislative History	Telephone:	845-6310	Introduced Date:	February 17, 2016
		Attorney:	Bruce Langston	Sponsor	

SUBJECT: Low-Income Housing Credit/Farmworker Housing

SUMMARY

This bill would modify the existing Low-Income Housing Credit (LIHC) under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL).

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

RECOMMENDATION

No position.

REASON FOR THE BILL

The reason for the bill is to encourage additional investment in farmworker housing by simplifying the provisions in the LIHC.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative for allocations made on or after the date the bill is effective.

FEDERAL/STATE LAW

Current federal tax law allows an LIHC for the costs of constructing, rehabilitating, or acquiring low-income housing. The credit amount varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized and varies between 30 and 70 percent of the present value of the qualified low-income housing. The credit is claimed over ten years.

The California Tax Credit Allocation Committee (Allocation Committee) allocates and administers the federal and state LIHC Programs.

Annually, $500,000 of low-income housing tax credits are set aside for farmworker housing developments. "Farmworker housing" is defined as housing for agricultural workers that is available to, and occupied by, only farmworkers and their households. Current state tax law generally conforms to federal law with respect to the LIHC, except that the state LIHC is claimed over four taxable years, is limited to projects located in California, must be allocated and authorized by the Allocation Committee, rents must be maintained at low-income levels for 30 years, and the Allocation Committee must have authorized a federal credit to the taxpayer or the taxpayer must qualify for the federal credit.

Upon request, a taxpayer is required to provide the Franchise Tax Board (FTB) a copy of the LIHC certification received from the Allocation Committee.

The Allocation Committee is required to provide annual reports, including the amount of LIHC allocated, to the FTB at a time and manner prescribed by the FTB.[1]

Any unused credit may continue to be carried forward until the credit is exhausted.

THIS BILL

This bill would make modifications to the LIHC relating to farmworker housing, which is administered by the Allocation Committee.

IMPLEMENTATION CONSIDERATIONS

Because the bill would be administered by the Allocation Committee, implementing this bill would occur during the department's normal annual update.

LEGISLATIVE HISTORY

ABX1-5 (Hernandez and Garcia, 2015/2016), substantially similar to this bill, would make modifications to the requirements to qualify for farmworker LIHC. ABX1-5 is pending assignment in the Assembly.

AB 35 (Chiu and Atkins, 2015/2016) would have, among other things, increased the amount of LIHC that may be allocated annually. AB 35 was vetoed by Governor Brown on October 10, 2015, because "despite strong revenue performance over the past few years, the state's budget has remained precariously balanced due to unexpected costs and the provision of new services. Now, without the extension of the managed care organization tax that I called for in special session, next year's budget faces the prospect of over $1 billion in cuts. Given these financial uncertainties, I cannot support providing additional tax credits that will make balancing the state's budget even more difficult. Tax credits, like new spending on programs, need to be considered comprehensively as part of the budget deliberations."

SB 377 (Beall, 2015/2016) would have, among other things, allowed the LIHC to be sold to an unrelated party. SB 377 was vetoed by Governor Brown on October 10, 2015, because "despite strong revenue performance over the past few years, the state's budget has remained precariously balanced due to unexpected costs and the provision of new services. Now, without the extension of the managed care organization tax that I called for in special session, next year's budget faces the prospect of over $1 billion in cuts. Given these financial uncertainties, I cannot support providing additional tax credits that will make balancing the state's budget even more difficult. Tax credits, like new spending on programs, need to be considered comprehensively as part of the budget deliberations."

---

[1] California conforms to Section 42(l) of the IRC regarding reporting requirements.

AB 952 (Atkins, Chapter 771, Statutes of 2013), allowed the LIHC to be used for projects in a Difficult Area or Tract areas.

SB 1247 (Lowenthal, Chapter 521, Statutes of 2008), repealed the farmworker housing credit (FWHC) from the Revenue and Taxation Code and required the FWHC to be allocated in the same manner as the state LIHC. SB 1247 specifies that the $500,000 annual cap plus any unallocated credit under current law is exclusively for farmworker housing and allows any FWHC that is unallocated or returned to be added to the annual credit allocation cap until exhausted. This act also allows the FWHC to be awarded independently of the federal LIHC.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide special rules for farmworker housing allowed by this bill. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

There would be a revenue impact to the general fund, however the amount is unknown.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

Current law allows a $500,000 allocation per year for farmworker housing under the LIHC. According to information provided by the Allocation Committee, the credit allocated to farmworker housing is largely under allocated and to date there is over $5 million awaiting allocation. Historical data indicates that the average per project allocation of the existing credit to farmworker housing is $1.5 million with a total of $3 million allocated over the last 10 years. However, due to the infrequent allocation of this credit, the department is unable to provide an estimate of the annual credit usage.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some could argue that modifying the allocation requirements for the farmworker housing project LIHC would allow more developers to qualify for the credit and therefore would expand the inventory of affordable housing in the state.

Opponents: Some could argue that this bill would increase economic disparity within the state by continuing to concentrate on the rehabilitation of low-income farmworker housing while ignoring other areas of housing that may need additional incentives to encourage development.

LEGISLATIVE STAFF CONTACT

Jessica Deitchman
Legislative Analyst, FTB
(916) 845-6310
jessica.deitchman@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Gail Hall
Legislative Director, FTB
(916) 845-6333
gail.hall@ftb.ca.gov