Franchise Tax Board

# ANALYSIS OF AMENDED BILL

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| Author: | Chiu | Analyst: | Jessica Deitchman | Bill Number: | AB 2817 |
| Related Bills: | See Legislative History | Telephone: | 845-6310 | Introduced and Amended Dates: | February 19, 2016, and March 17, 2016 |
| | | Attorney: | Bruce Langston | Sponsor | |

**SUBJECT:** Low Income Housing Credit

## SUMMARY

This bill would modify the existing Low-Income Housing Credit (LIHC).

This analysis only addresses the provisions of the bill that would impact the department's programs and operations, and not those provisions administered by the California Tax Credit Allocation Committee (Allocation Committee).

## RECOMMENDATION

No position.

### Summary of Amendments

The bill as introduced on February 19, 2016, modified the LIHC allocation amount.

The March 17, 2016, amendments added language modifying the aggregate housing credit dollar amounts that could be allocated by the Allocation Committee.

This is the department's first analysis of the bill.

## REASON FOR THE BILL

The reason for the bill is to encourage investment in older low-income housing in the state by providing a tax credit program that targets this type of investment.

## EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective and operative immediately upon enactment, except for the provision increasing amounts allocable, which would be specifically operative for allocations made during or after calendar year 2017.

## 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 Allocation Committee allocates and administers the federal and state LIHC Programs.

Current state tax law generally conforms to federal law (Section 42 of the Internal Revenue Code) 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.

The LIHC is allocated in amounts equal to the sum of all the following:

- $100 million,[1]
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

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

The taxpayer is required to provide to the Franchise Tax Board (FTB), upon request, a copy of the certification received from the Allocation Committee that includes the amount of tax credit allocated to the taxpayer for each credit period.

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.

**THIS BILL**

Beginning for allocations made during calendar year 2017, this bill would:

- Increase the LIHC allocation amount by an additional $300 million, subject to indexing for inflation as specified.
- Increase the annual amount available for allocation to farmworker housing projects from $500,000 to $25 million. Unallocated amounts for a calendar year would be added to the total LIHC allocation amount available for the following calendar year.

**IMPLEMENTATION CONSIDERATIONS**

Implementing this bill would occur during the department’s normal annual update.

[1] The statutory $70 million allocation amount indexed by the Consumer Price Index through 2015.

## TECHNICAL CONSIDERATIONS

For definitional clarity, the following four amendments are recommended:

On page 2, line 17 and line 19 after “income” insert “households”

On page 14, line 10 and line 12 after “income” insert “households”

On page 26, line 10 and line 12 after “income” insert “households”

To correct a grammatical error, the following amendment is recommended:

On page 5, line 22 after “the” strike “term at risk”

The references to limited liability company in the PITL and CTL are unnecessary. The following six amendments are recommended:

On page 14, line 3, strike “members in the case of a limited liability company”

On page 14, lines 7-8, after “partnership” strike “the limited liability company in the case of a limited liability company”

On page 15, line 28, after “partnership” strike “limited liability company”

On page 26, line 3, after “partnership,” strike “members in the case of a limited liability company”

On page 26, lines 7-8, after “partnership,” strike “the limited liability company in the case of a limited liability company”

On page 27, line 28, after “partnership,” strike “limited liability company”

## LEGISLATIVE HISTORY

AB 35 (Chiu and Atkins, 2015/2016) substantially similar to this bill, would have, among other things, amended the LIHC to increase the amount of credit 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 states’ 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, the 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.”

AB 952 (Atkins, Chapter 771, Statutes of 2013), modified the LIHC allocation provisions.

**OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Florida, Michigan*, and *Minnesota*, lack a state LIHC.

*Illinois* currently offers a state LIHC program that is funded on donations made to the program. A state tax credit is available at 50 cents for every dollar donated.

*Massachusetts,*[2] and *New York*[3] offer a state LIHC similar to the credit currently offered in California.

**FISCAL IMPACT**

This bill would not significantly impact the department's costs.

**ECONOMIC IMPACT**

This bill will result in the following revenue loss:

| Estimated Revenue Impact of SB 2817<br>As Amended March 17, 2016<br>Assumed Enactment After June 30, 2016<br>($ in Millions) | | |
|---|---|---|
| 2016-17 | 2017-18 | 2018-19 |
| -$40 | -$150 | -$180 |

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.

[2] Currently capped at $20,000,000 per calendar year.
[3] Not currently allocated on a calendar year basis.

**Revenue Discussion:**

Using LIHC allocation data from the Allocation Committee, it is assumed that the maximum credit allocation threshold would be reached each year. This bill authorizes an additional $300 million in LIHC allocations. It is assumed that five percent, or $15 million, of the allocation would ultimately be returned to Allocation Committee due to unforeseen project issues. According to information provided by the Allocation Committee, the farmworker state tax credit is largely under allocated and there is over $5 million awaiting allocation. Due to the infrequent allocation of the farmworker state tax credits, the $25 million credit allocations were modeled as a one year allocation lag, this lag is applied to each year. For example, the $25 million would be set aside in tax year 2017, and then added back in tax year 2018. Based on current credit awards and usage, it is estimated that 70 percent of the remaining annual credits would be used to offset income and franchise taxes and the remainder would be used against insurance taxes, which is not included in the table above. Based on current LIHC usage, it is assumed that 75 percent of the credit would be used in the year generated and the remaining 25 percent would be carried forward to future years. 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 above table.

## SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

## ARGUMENTS

Proponents: Some could argue that increasing the amount that could be allocated for LIHC 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 housing while ignoring other areas of housing that may need additional incentives to encourage development.

## LEGISLATIVE STAFF CONTACT

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