Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Chiu and Atkins	Analyst:	Jessica Deitchman	Bill Number:	AB 35
Related Bills:	See Legislative History	Telephone:	845-6310	Amended Dates:	March 2, 2015, and April 6 &16, 2015
		Attorney:	Bruce Langston	Sponsor	

SUBJECT:	Low Income Housing Credit

SUMMARY

This bill would modify the existing Low-Income Housing Credit (LIHC) to increase the amount of credit that may be allocated.

RECOMMENDATION

No position.

Summary of Amendments

The March 2, 2015, April 6, 2015, and April 16, 2015, amendments modified the LIHC.

This analysis replaces the department's analysis of the bill as introduced December 1, 2014.

This analysis only addresses the provisions of this bill that impact the department's programs and operations, and not those provisions administered by the California Tax Credit Allocation Committee[1] (Allocation Committee).

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 immediately upon enactment and specifically operative for allocations made for calendar year 2015 and later.

FEDERAL/STATE LAW

Current federal tax law allows a 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.

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[1] Voting members of this committee are the State Controller, the State Treasurer and the Director of Finance.

Board Position:						Executive Officer	Date
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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 (10 years for federal), 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 (15 years for federal), 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:

- For calendar years ending 2002 and thereafter, $70 million increased by the percentage by which the Consumer Price Index (CPI), for the preceding calendar year, exceeds the CPI for the 2001 calendar year,
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

The Allocation Committee certifies the amount of tax credit amount allocated. In the case of a partnership or an S Corporation, a copy of the certificate is provided to each taxpayer. The taxpayer is required, upon request, to provide a copy of the certificate to the Franchise Tax Board.

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

THIS BILL

This bill would make substantial modifications to the existing LIHC administered by the Allocation Committee. The bill, among other things, would increase the amount of credit that may be allocated under the existing Low-Income Housing Credit to the following:

- an additional $300 million for the 2015 calendar year, and
- for calendar years 2016 and each calendar year thereafter, $300 million increased by inflation as measured by the Consumer Price Index, as specified.

A housing sponsor receiving an allocation from the original $70,000,000 allocation would remain eligible for receipt of the housing credit allocated from the credit ceiling increase being proposed by this bill.

IMPLEMENTATION CONSIDERATIONS

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

LEGISLATIVE HISTORY

AB 377 (Beall, 2015/2016) would, among other things, amend the LIHC to allow the credit to be sold to an unrelated party. AB 377 is currently at the Assembly Revenue and Taxation committee.

AB 952 (Atkins, Chapter 771, Statutes of 2013), amended the existing LIHC to allow the state's Housing Credits to be used in a Difficult Area or Tract for projects that dedicate at least 50 percent of the project's units to be reserved for special needs populations as defined by the Committee regulations, allow the committee to replace the federal Housing Credit with a state Housing Credit of up to 30 percent of a project's eligible basis, if the federal Housing Credit is reduced in an equivalent amount, and to require the Committee to determine what an equivalent amount of state Housing Credit is necessary to replace the federal Housing Credit a taxpayer would have received.

SB 16 (Lowenthal, 2009/2010), would have made the LIHC refundable and would have extended the partnership allocation rules for the preliminary reservation of the state LIHC during tax year 2008. SB 16 failed passage out of the Senate by the constitutional deadline.

SB 622 (Lowenthal, 2009/2010), would have allowed projects that received a preliminary reservation of the state LIHC during calendar year 2008, for which financial closing has not occurred by the effective date of the bill, to be allocated to the partners of a partnership owning a low-income housing project. SB 622 failed passage out of the Senate by the constitutional deadline.

SB 585 (Lowenthal, Chapter 382, Statutes of 2008), requires a project that receives a preliminary reservation of the LIHC on or after January 1, 2009, and before January 1, 2016, to allocate the LIHC to the partners of a partnership owning a low-income housing project in accordance with a partnership agreement, regardless of how the federal LIHC is allocated to the partners or whether the allocation of the credit under the terms of the agreement has substantial economic effect under Internal Revenue Code section 704(b). In addition, SB 585 requires a deferral of any loss or deduction attributable to the sale, transfer, exchange, abandonment, or any other disposition of a partnership interest where the credit was allocated without substantial economic effect. The loss is deferred until the first taxable year immediately following the end of the ten-year credit period for which the federal credit is allowed.

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

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 Low-Income Housing Credit.

Illinois currently offers a state Low-Income Housing Credit 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] all offer a state Low-Income Housing Credit similar to the one currently offered in California.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 35 As Amended April 16, 2015 Assumed Enactment After June 30, 2015 ($ in Millions)		
2015-16	2016-17	2017-18
- $190	- $180	- $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.

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, after inflation indexing, of this it is assumed that five percent, or $15 million, of the allocation would ultimately be returned to the Allocation Committee due to unforeseen project issues. 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.

It is estimated that once fully phased in, the average annual revenue loss would be approximately $190 million per year. The tax year estimates are converted to fiscal year estimates, and rounded, and reflected in the table above.

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

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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