Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

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Related Bills:	See Legislative History	Telephone:	845-6310	Introduced Date:	July 16, 2015
		Attorney:	Bruce Langston	Sponsor	

SUBJECT:	Low-Income Housing Credit/Farmworker Housing

SUMMARY

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

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 the farmworker housing by modifying the LIHC to increase the funds available to be allocated to this type of credit.

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 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.

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

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

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taxpayer or the taxpayer must qualify for the federal credit. The LIHC is allocated in amounts equal to the sum of all the following:

- $70 million increased by the percentage by which the Consumer Price Index (CPI) exceeds the prior calendar year,
- The unused housing credit ceiling, if any, for the preceding calendar years,
- The amount of housing credit ceiling returned in the calendar year, and
- $500,000 per calendar year for projects to provide farmworker housing.[1]

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

THIS BILL

This bill would increase the amount of LIHC that may be allocated to farmworker housing in a calendar year from $500,000 to $25,000,000. Additionally, the bill would make substantial modifications to the farmworker state credit under the LIHC administered by the Allocation Committee.

IMPLEMENTATION CONSIDERATIONS

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

TECHNICAL CONSIDERATIONS

To correct an incorrect reference, the following amendments are recommended:

On page 7, line 20, strike "50199.77" and insert "50199.7"

On page 18, line 5, strike "50199.77" and insert "50199.7"

On page 29, line 5, strike "50199.77" and insert "50199.7"

LEGISLATIVE HISTORY

AB 35 (Chiu and Atkins, 2015/2016) would, among other things, amend the LIHC to increase the amount of credit that may be allocated annually. AB 35 is currently in the Senate committee on appropriations.

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.

[1] As defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

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

There would be a revenue impact to the general fund, but 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 credit allocation per year for farmworker housing under the LIHC. According to information provided by the Allocation Committee, the credit is largely under allocated and to date there is over $5 million awaiting allocation. Due to the infrequent allocation of the credit, the department is unable to provide an estimate of the annual credit usage. Historical data indicates that the average per project allocation of the existing farmworker state credit is $1.5 million with a total of $3 million allocated over the last 10 years.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

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

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

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