



## **Analysis of Original Bill**

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Sponsor:

Bill Number: AB 2922

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Introduced: February 16, 2018

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Related Bills: See Legislative  
History

**Subject:** Qualified Affordable Housing Developer Credit

### **Summary**

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), create an allocated tax credit for amounts paid or incurred by a taxpayer to a qualified developer of low-income housing.

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 this bill is to incentivize investment in affordable housing development projects.

### **Effective/Operative Date**

As a tax levy, this bill would be effective immediately upon enactment, and specifically operative for each taxable year beginning on or after January 1, 2019, and before January 1, 2024.

### **Federal/State Law**

#### *Low-Income Housing Credit*

Current federal tax law allows a Low-Income Housing Credit (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. The California Tax Credit Allocation Committee (Allocation Committee) allocates and administers the federal and state LIHC Programs.

Current state tax law generally conforms, with modifications, to federal law (Section 42 of the Internal Revenue Code (IRC)) with respect to the LIHC, and is allocated in amounts equal to the sum of all the following:

- \$100 million,<sup>1</sup>
- 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 (FTB).

#### *Requirement under Revenue and Taxation Code section 41*

Under Revenue and Taxation Code (R&TC) section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

#### *Credit Sharing*

Existing state law allows a credit earned by members of a combined reporting group to be assigned to an affiliated corporation that is a member of the same combined reporting group.

#### *Sale of a Credit*

The sale of a credit is a sale of property, therefore, the seller is required to report gain from the sale. The gain from the sale of the credit is the excess of the total consideration received over the basis. The total amount of consideration received is the sum of any money received plus the fair market value of the property (other than money) received. Because the seller's basis in the credit is \$0 (zero), the seller will recognize and report gain on the full amount of consideration received.

#### **This Bill**

For each taxable year beginning on or after January 1, 2019, and before January 1, 2024, this bill would, under the PITL and the CTL, allow a tax credit, in an amount determined by the Allocation Committee in its issued credit certificate, for the amount paid or incurred by a taxpayer to a qualified developer during the taxable year for the development of a qualified project.

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<sup>1</sup> The statutory \$70 million allocation amount as adjusted by the Consumer Price Index (CPI) through 2015.

No credit will be allowed unless the qualified developer provides the following to the Allocation Committee:

- The name of the applicant, including the legal name and any “doing business as” names, and the type of legal entity, if applicable.
- The state of incorporation or organization, if applicable.
- The California corporation number, California Secretary of State identification number, federal employer identification number, or social security number.
- Specified contact information.
- Details about the project.
- The amount of the credit requested.
- The proposed taxable years for which the credit is requested.

The Allocation Committee would be required to:

- Establish a procedure for filing with the Allocation Committee, or its successor, and create a written application jointly with the FTB for allocation of the credit. The application would be required to include, but not be limited to, the following information:
  - The scope of project.
  - The location of project and individual housing units.
  - The size of each housing unit.
  - The number of families that would be eligible to purchase homes when the project is completed.
  - The purchase price of each housing unit.
  - The cost of building or rehabilitating each housing unit.
  - A statement, signed by an officer or executive of the applicant, establishing the credit is a significant factor in the applicant’s ability to perform the project, and if the project is at risk of abandonment in the absence of the credit.
  - Any other information deemed relevant by the Allocation Committee or the FTB.
- Establish criteria for allocating the credits.
- Determine and designate applicants meeting the requirements for the credit.
- Allocate credits by fiscal year to each designated applicant according to the lowest average credit need until the credit amount is exhausted.
- Make credits available on a first-come-first-served basis when applications for the year are less than the available credits.
- Certify credit allocated and issue credit certificates to developers of designated applicants.

A taxpayer may sell this credit to an unrelated party under the following terms:

- Prior to the sale, the taxpayer must report details about the purchase and sale of the credit in a form and manner determined by the FTB.
- The unrelated party may not resell the credit to another unrelated party.
- The sale price must be equal to or exceed 90 percent of the face value of the credit.

This bill would define the following terms:

- “Area median income” means the median income as published by the Department of Housing and Community Services pursuant Section 50093 of the Health and Safety Code.
- “Qualified developer” means a nonprofit organization pursuant to IRC section 501(c)(3) that has received a welfare exemption pursuant to R&TC section 214.5 and has been issued a credit certificate from the Allocation Committee.
- “Qualified project” means a project that satisfies all of the following:
  - Has a specific site in this state with a parcel identifier or address.
  - Units will be sold to persons or families with incomes at 30 percent to 80 percent of the area median income and subject to a contract that meets all of the following:
    - The contract restricts the use of the land for at least 30 years to owner-occupied housing available at affordable housing cost in accordance with Health and Safety Code section 50052.5.
    - The contract includes a deed of trust on the property in favor of the nonprofit corporation to ensure compliance with the terms of the program, which has no value unless the owner fails to comply with the covenants and restrictions of the terms of the home sale.
    - The local housing authority, or an equivalent agency, or, if none exists, the city attorney or county counsel, has made a finding that the long-term restrictions in the contract serve a public purpose.
    - The contract is recorded and provided to the assessor.
  - Is subject to equity sharing provisions as described under Section 65915 of the Government Code.

This bill would also:

- Allow the CTL credit to be assigned to members of the same combined reporting group under the rules of R&TC section 23663.
- Exclude the credit from the provisions of R&TC section 41.
- Repeal the credit as of December 1, 2024.

## Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill uses terms that are undefined, i.e., "applicant," "designated applicant," "developers of designated applicants," and "face value of the credit." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

It is unclear who would receive the certification and the credit. The taxpayer? Qualified developer? Applicant? Would the same entity receive both the certification and the credit?

The bill is silent on whether, how, and when the department would be notified of credit certificates issued by the Allocation Committee.

With regard to the sale of a credit, the bill is silent on:

- What "required information" means with regard to the sale of a credit?
- Would the credit's purchaser be subject to the same requirements as the seller?
- How would sales of credits that have been previously claimed on a tax return be treated?
- How would credits claimed by both the seller and the purchaser be treated?
- Whether and to what extent the FTB would have regulatory authority for purposes of administering this credit and whether that authority would be subject to the provisions of the Administrative Procedures Act.

Because this bill fails to specify otherwise, it is possible that one taxpayer could get the entire benefit of the credit this bill would allow. If this contrary to the author's intent, this bill should be amended.

## Legislative History

AB 1670 (Gomez, 2017/2018) would have allowed a credit equal to 50 percent of the amount paid or incurred by a taxpayer to a qualified developer for the development of a qualified project, not to exceed \$250,000. AB 1670 failed to pass out of the Assembly by the constitutional deadline.

AB 201 (Steinorth, 2017/2018) would have allowed a credit on the sale of a qualified vacant lot and an additional credit if construction on the vacant lot begins within five years. AB 201 failed to pass out of the Assembly by the constitutional deadline.

AB 2842 (Thurmond, 2015/2016) would have created a new saleable tax credit similar to the existing LIHC. AB 2842 failed to pass out of the Assembly by the constitutional deadline.

### 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. None of these states provide a tax credit similar to the credit this bill would allow. However, *Florida, Illinois, Massachusetts, and New York* offer an LIHC.

### Fiscal Impact

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved. As the bill moves through the legislative process and the implementation concerns are resolved, costs will be identified.

### Economic Impact

#### Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2922 as Introduced on February 16, 2018  
For Taxable Years Beginning On or After January 1, 2019, and Before January 1, 2024  
Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue
2018-2019	- \$0.9
2019-2020	- \$4.2
2020-2021	- \$6.5

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

#### Revenue Discussion

This bill provides that the aggregate amount of credits to be allocated each fiscal year would be \$5 million, plus any unallocated credit amount, if any, for the preceding fiscal year, and the amount of unclaimed previously allocated credits.

For tax year 2019, the maximum aggregate credits to be allocated would be \$5 million. Due to the timing of the enactment and assumed timing of project approvals, it is estimated that 50 percent, or \$2.5 million in credits would be allocated in 2019, and 100 percent would be allocated each year thereafter. This estimate assumes the remaining \$2.5 million would be carried over and included in the aggregate amount to be allocated for the next fiscal year. The amount of credit awarded to a taxpayer, by the Allocation Committee, is based on the amount paid by the taxpayer to the qualified developer during the taxable year for the development of a qualified project. It is estimated that 70 percent, or \$1.8 million, of the credit would be used in

the year generated and the remaining 30 percent would be used over the following 3 years. As specified in this bill, the \$750,000 in allocated but unclaimed credit from taxable year 2019 would be added to the aggregate amount of allocation available for fiscal year 2020-2021, for a total allocation amount of \$8.3 million. The resulting revenue loss is estimated to be \$1.8 million in 2019, \$6.2 million in 2020, and \$7 million in taxable year 2021.

The tax-year estimates are converted to fiscal years, and then rounded to arrive at the amounts reflected in the above table.

### **Support/Opposition**

Support: None provided.

Opposition: None provided.

### **Arguments**

Proponents: Some may say that this bill would incentivize the development of additional affordable housing.

Opponents: Some could argue that providing a second state credit for the development of affordable housing when state and federal law already provides an LIHC may unnecessarily divert limited state resources from other social programs that may lack federal funding.

### **Policy Concerns**

This bill would allow the credit to be claimed in the year in which amounts are paid or incurred with respect to the project rather than in the year the affordable housing is placed in service and ready for occupancy. As a result, credits would be allowed for an approved project regardless of whether or when it is completed and occupied. To alleviate the risk of abandonment, the credit could be allowed upon certification of occupancy.

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense.

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