



Analysis of Amended Bill

Author: Jackson

Sponsor:

Bill Number: SB 1253

Analyst: Toni Arnold

Phone: (916) 845-4743

Amended: March 22, 2018, and
May 7, 2018

Attorney: Bruce Langston

Related Bills: See Legislative
History

Subject: Low-Income Housing Credit/Qualified Opportunity Zone/Increase Aggregate Amount of Credits

Summary

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

This bill would also modify the Revenue and Taxation Code relating to insurance taxation.

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

Recommendation – No position.

Summary of Amendments

The March 22, 2018, amendments removed provisions that would have modified the Government Code relating to land use and added the provisions discussed in this analysis.

The May 7, 2018, amendments made several nonsubstantive technical amendments.

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

Reason for the Bill

The reason for the bill is to increase development of low-income housing in California by expanding the LIHC.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for calendar years 2019 through 2030.

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)¹ 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 (IRC)) 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:

- \$100 million,²
- 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.³

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

The Allocation Committee certifies the amount of LIHC 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).

The Allocation Committee is required to enter into an agreement with the FTB to pay any costs incurred by the FTB to administer this credit.

An LIHC can be sold to more than one unrelated party, but cannot be resold by the unrelated party to another taxpayer or other party. All or any portion of any LIHC allowed may be resold once by an original purchaser to one or more unrelated parties, subject to all the requirements of the LIHC.

Existing federal law, effective December 22, 2017, designates certain population census tracts as “qualified opportunity zones.”⁴ Currently, California does not conform to this provision.

This Bill

This bill would, under the PITL and CTL, increase the LIHC available for allocation in the 2019 calendar year by 100 percent rounded up to the nearest \$10 million, and for the calendar years 2020 through 2030, increase the amount available for allocation by the percentage that the Consumer Price Index (CPI) for the preceding calendar year exceeds the CPI for 2001.

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

² The statutory \$70 million allocation amount adjusted by the CPI through 2015.

³ As defined in subdivision (h) of Section 50199.7 of the Health and Safety Code.

⁴ “Qualified opportunity zone” means a population census tract that is a low-income community that is designated as a qualified opportunity zone.

Eligibility for the LIHC during the calendar years 2019 through 2030 would be expanded to include a low-income housing project located in a qualified opportunity zone as defined in Section 1400Z-1 of the IRC.

For calendar years 2031 and thereafter, the calculations of the LIHC available for allocation would revert to the calculation in effect prior to the temporary increase.

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

AB 71 (Garcia, et al., 2017/2018), would have among other things, modified the allocation of the LIHC relating to the types of housing and methods that qualified. AB 71 failed to pass by the constitutional deadline.

AB 571 (Garcia, Chapter 372, Statutes of 2017) modified: 1) the definition of farmworker housing and, 2) the applicable percentage used by the Allocation Committee for purposes of allocating and determining the LIHC for federally subsidized farmworker housing.

AB 2922 (Gipson, 2017/2018) would create an allocated tax credit for amounts paid or incurred by a taxpayer to a qualified developer of low-income housing. AB 2922 is currently pending before the Assembly Revenue and Taxation Committee.

AB 2999 (Bonta, 2017/2018) would allow a tax credit for certain costs incurred by an employer related to the construction of affordable housing, or investment in an employer-assisted housing program. AB 2999 is currently pending before the Assembly Revenue and Taxation Committee.

AB 3072 (Chiu, 2017/2018) would increase the LIHC allocation by \$300 million and allocate to farmworker housing projects \$25 million per year of that amount. AB 3072 is currently pending before to the Assembly Revenue and Taxation Committee.

AB 35 (Chiu and Atkins, 2015/2016) would have increased the LIHC allocation amount. AB 35 and eight other bills were vetoed by Governor Brown on October 15, 2015, because he could not support additional tax credits that were not considered comprehensively as part of the budget deliberations.

AB 2817 (Chiu, 2015/2016) would have increased the LIHC allocation amount by an additional \$300 million and would have modified the farmworker housing projects allocation amount. AB 2817 failed to pass by the constitutional deadline.

AB 952 (Atkins, Chapter 771, Statutes of 2013) allowed the Allocation Committee to award LIHC to developments in qualified census tracts or difficult areas and to replace the federal LIHC with a state LIHC up to 30 percent of a project's eligible basis, if the federal LIHC is reduced in an equivalent amount.

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, Massachusetts, Michigan and New York offer a state LIHC similar to the credit offered in California. The *Florida* corporate tax credit is 9 percent of the eligible basis of any designated project for each year of the credit period. The *Massachusetts* credit was capped at \$20,000,000 per calendar year and the *New York* credit was not allocated on a calendar-year basis.

Illinois 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.

Minnesota lacks a state LIHC.

Fiscal Impact

The LIHC is allocated and managed by the Allocation Committee; therefore, these changes would not significantly impact the department.

Economic Impact

Revenue Estimate

This bill would result in the following revenue impact:

Estimated Revenue Impact of SB 1253 as Amended May 7, 2018
For Taxable Years Beginning On or After January 1, 2018
Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue
2018-2019	+ \$0.07
2019-2020	- \$0.04
2020-2021	- \$8

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. 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 approximately \$110 million in LIHC additional allocations beginning for allocations made during calendar year 2019. Allocations will continue to increase by the CPI, reaching approximately \$150 million in 2030. In 2031, LIHC allocations will return to the amount specified under current law. It is assumed that five percent, or \$6 million, of the 2019 allocation would ultimately be returned to the Allocation Committee due to unforeseen project issues.

Based on total current LIHC awards and usage, it is estimated that 75 percent, or \$80 million, of the 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 above table. Based on current LIHC usage, it is assumed that 70 percent, or \$55 million, of the credit would be used over the four-year credit period and the remaining 30 percent would be carried forward to future years. It is further assumed that 25 percent of the carry forward, or \$6 million, would be sold at 80 percent of its face value causing the seller to recognize capital gains in the year of the sale. It is assumed these amounts would be used over the four-year credit period.

Allocated credits cannot be used until after the building has been put into service. As a result, it is assumed that the credit usage would begin in taxable year 2021. 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 to arrive at the amounts reflected in the above table.

The combined revenue impact from the sale and credit usage results in a revenue gain of \$70,000 in the first year, a revenue loss of approximately \$40,000 in fiscal year 2019-2020, \$8 million in fiscal year 2020-2021, and increasing to peak at \$90 million in fiscal year 2030-2031.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some could argue that increasing the LIHC amount available for allocation and expanding eligibility for 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 housing while ignoring other areas of housing that may need additional incentives to encourage development.

Legislative Staff Contact

Toni Arnold
Legislative Analyst, FTB
(916) 845-4743
toni.arnold@ftb.ca.gov

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

Diane Deatherage
Legislative Director, FTB
(916) 845-6333
diane.deatherage@ftb.ca.gov