



Bill Analysis

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Sponsor:

Bill Number: AB 1288

Related Bills: See Legislative
History

Amended April 26, 2021

SUBJECT

Low Income Housing Tax Credit

SUMMARY

This bill would, under the Low-Income Housing Credit (LIHC) provisions of the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), modify the application period for the existing allocation of up to \$500 million in low-income housing tax credits for calendar years after 2021 and provide for an allocation of up to \$500 million for calendar years 2022 and thereafter, as specified.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 26, 2021, amendments removed language related to personal property taxes, and replaced them with the provisions related to LIHC discussed in this analysis.

This is the department's first analysis of the bill and only addresses the provisions that impact the department.

REASON FOR THE BILL

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

ANALYSIS

This bill would limit the application period under the existing code relating to the allocation of up to five hundred million dollars (\$500,000,000) through the 2021 calendar year, and would add new provisions for the allocation of up to five hundred million dollars (\$500,000,000) for the 2022 calendar year and thereafter, if the annual budget or related legislation appropriates or specifies an amount available for allocation by the California Tax Credit Allocation Committee (Allocation Committee). Furthermore, this bill would provide that the Allocation Committee may allocate up to two hundred million dollars (\$200,000,000) for housing financed by the California Housing Finance Agency under its Mixed-Income Program.

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The bill would also include provisions for the Allocation Committee and the California Debt Limit Allocation Committee relating to the authorization and allocation of the credit among qualified low-income housing projects.

This bill would also make nonsubstantive technical changes to the existing provisions.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2021.

Federal/State Law

Federal Law

Current federal tax law allows an LIHC for the costs of constructing, rehabilitating, or acquiring low-income housing. The LIHC 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 LIHC is claimed over ten years.

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

State Law

Current state tax law generally conforms to federal law by reference 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.

For taxable years beginning on or after January 1, 2009, and before January 1, 2020, current law requires allocation of the LIHC to partners based upon the 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.

Additionally, for a project that receives a preliminary reservation on or after January 1, 2016, and before January 1, 2020, a taxpayer may make an election in its application to the Allocation Committee to sell all or any portion of any LIHC allowed to one or more unrelated parties for each taxable year in which the LIHC is allowed, as specified in provisions administered by the Allocation Committee.

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For 2020 and 2021 calendar years and thereafter seventy million dollars (\$70,000,000) and up to five hundred million dollars (\$500,000,000) may be allocated to specified low-income housing projects pursuant to an authorization in the annual budget or related legislation, and specified regulatory action by the Allocation Committee. 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 partner or shareholder. The taxpayer is required, upon request, to provide a copy of the certificate to the Franchise Tax Board (FTB).

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

Implementation Considerations

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

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 83 (Committee on Budget, Chapter 15, Statutes of 2020) among other things, made some modifications to the statutes providing for low-income housing.

AB 89 (Ting, Chapter 7, Statutes of 2020), the Budget Act of 2020, among other things appropriated an additional \$500 million for LIHC allocations.

SB 1030 (Committee on Housing, Chapter 165, Statutes of 2020) modified the LIHC, and enacted several housing-related changes under the Government Code, Health and Safety Code, and the Welfare and Institutions Code.

AB 101 (Committee on Budget, Chapter 159, Statutes of 2019), among other things, under the PITL and the CTL, modified the LIHC.

AB 10 (Chiu, et al., 2019/2020), among other things, would have increased the LIHC allocations for both the regular credit and the farmworker housing credit, and would have removed the rental passive activity loss limitation. AB 10 did not pass the committee process.

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SB 110 (Committee on Budget and Fiscal Review, 2019/2020) similar to this bill, would have modified provisions of the Government, Health and Safety, Revenue and Taxation, and Welfare and Institutions Codes relating to housing. SB 110 did not pass the committee process.

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 71 (Garcia, et al., 2017/2018) among other things, would have modified the allocation of the LIHC relating to the types of housing and methods that qualified. AB 71 did not pass out of the house of origin by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This bill as amended April 26, 2021, would not impact state income or franchise tax revenue.

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.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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