



## Bill Analysis

Author: Gray

Sponsor:

Bill Number: AB 2950

Related Bills: See Legislative  
History

Amended: May 3, 2022

### SUBJECT

Community Development Tax Credit Program

### SUMMARY

This bill, under the Revenue and Taxation Code (RTC) would allow tax credits related to the Community Development Tax Credit Program that would be established by this bill under the Government Code (GC).

The credit amount, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would equal the applicable credit percentage of the amount of each qualified investment made by the taxpayer during the taxable year to an eligible community development corporation that is certified by the Treasurer to receive an allocation of tax credit.

The Treasurer in collaboration with the Department of Community Services and Development (DCSD) would administer the Community Development Tax Credit Program.

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

### RECOMMENDATION

No position.

### SUMMARY OF AMENDMENTS

The May 3, 2022, amendments added a sunset date, modified the maximum credit amount and credit percentage, and added RTC section 41 requirements.

### REASON FOR THE BILL

The reason for this bill is to incentivize private investment in housing, community facilities, and neighborhood revitalization through community development corporations, community development financial institutions, community action agencies, and community housing development corporations.

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## ANALYSIS

For each taxable year beginning on or after January 1, 2023, and before January 1, 2028, this bill, under the PITL and the CTL, would allow a credit, not to exceed \$20,000,000 per taxable year. The credit amount would equal 50 percent of the amount of each qualified investment made by the taxpayer during the taxable year to an eligible community development corporation that is certified by the Treasurer to receive an allocation of tax credit pursuant to the Community Development Tax Credit Program that would be enacted by this bill under the GC. A credit would only be allowed if the aggregate amount of qualified investments made by the taxpayer in the taxable year is at least \$100,000.

This bill would define the following terms and phrases:

- “CDC investor tax credit certificate” means the community development corporation investor tax credit certificate issued by the eligible community development corporation pursuant to the Community Development Tax Credit Program.
- “Certification of CDC tax credit allocation” means the certification of CDC tax credit allocation issued by the Treasurer pursuant to the Community Development Tax Credit Program.
- “Community Development Tax Credit Program” means the Community Development Tax Credit Program that would be established by this bill (in Article 2.5 (commencing with Section 12335) of Chapter 4 of Part 2 of Division 3 of Title 2 of the GC).
- “Eligible community development corporation” has the same meaning as defined in Section 12335.2 of the GC that has been issued a certification of CDC tax credit allocation. Section 12335.2 would provide that an “eligible community development corporation” means a nonprofit corporation in good standing, as determined by the Secretary of State that is created for the purpose of supporting and revitalizing communities and meets specified requirements.
- “Qualified investment” has the same meaning as that term would be defined in Section 12335.2 of the GC as enacted by this bill for which, in exchange, the taxpayer has received a CDC investor tax credit certificate. Pursuant to Section 12335.2, a “qualified investment” would include a grant, donation equity investment, or charitable contribution made by a taxpayer that does not require repayment, interest payment, or financial return back to the taxpayer. The term would not include loans or equity equivalent investments.

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This bill would provide that:

- A credit would only be allowed if the eligible community development corporation and the taxpayer provide satisfactory substantiation to, and in the manner requested by, the Franchise Tax Board (FTB) that the eligible community development corporation has received an allocation of tax credit by the Treasurer pursuant to Community Development Tax Credit Program, and the taxpayer has made a qualified investment in that eligible community development corporation in exchange for a tax credit allowed under this section. Satisfactory substantiation would mean a certification of CDC tax credit allocation and a CDC investor tax credit certificate.
- Any unused credits could be carried over for three years, if necessary until the credit has been exhausted.

This bill would provide that the Treasurer in collaboration with the DCSD would administer the Community Development Tax Credit Program.

The DCSD would be required to do the following:

- On or before July 1, 2023, develop and provide forms for, and establish uniform procedures for the submission and review of, applications for an allocation of CDC tax credits.
- Certify that an applicant for an allocation of CDC tax credits is an eligible community development corporation before the applicant may be allocated a CDC tax credit by the Treasurer.

The Treasurer would be required or authorized to do the following:

- Accept and evaluate applications in order to certify an allocation of CDC tax credits to an eligible community development corporation.
- Beginning with the 2023 calendar year, allocate the CDC tax credits for a current calendar year, in an amount not to exceed \$20,000,000 per calendar year, among eligible community development corporations pursuant to specified criteria. If an eligible community development corporation is allocated a CDC tax credit, the amount would be at least \$100,000, but could not exceed \$500,000 in any one fiscal year. An allocation would be valid for a period of three years from the date of allocation, subject to revocation or extension.
- Issue the certification of CDC tax credit allocation that must include the name of the eligible community development corporation, the amount of CDC tax credit allocated, the date of allocation, and any other necessary information as may be determined by the Treasurer. The allocation of CDC tax credits, or a portion thereof, would be transferable to taxpayers who make qualified investments to that eligible community development corporation.

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- Create a CDC investor tax credit certificate that shall be given by an eligible community development corporation to a person who makes a qualified investment in the eligible community development corporation upon receipt of that qualified investment. The CDC investor tax credit certificate would include the identification of the name of the person who made the qualified investment, the amount of the qualified investment, the date the qualified investment was made, and any other necessary information as may be determined by the Treasurer. The CDC investor tax credit certificate would be acceptable as proof that the person has made qualified investments in an eligible community development corporation, the amount of which could be taken into account in calculating the tax credits.
- Maintain a list on its internet website of all eligible community development corporations as certified by the DCSD.
- Authorized to revoke a certification of allocation of CDC tax credits to an eligible community development corporation after two years from the date of the allocation, after affording the corporation notice and the opportunity to be heard, for specified reasons.
- Authorized to prescribe rules and regulations to carry out the purposes of this Community Development Tax Credit Program, including any rules and regulations necessary to establish procedures, processes, and requirements that are necessary for implementation.

An eligible community development corporation that receives a certification of an allocation of CDC tax credits would be required to do the following:

- Receive qualified investments directly from one or more taxpayers and, in exchange, transfer a portion of its allocation of CDC tax credits equivalent to the amount of the qualified investment and issue a CDC tax credit certificate in that amount to that taxpayer.
- Commencing with the calendar year after an allocation has been made, submit an annual report to the Treasurer regarding outcomes achieved during the prior calendar year that would be made available to the public by the Treasurer.

The credit would remain in effect until December 1, 2028, and be repealed as of that date.

Under the GC, the FTB would be required to prepare a written report to the Legislature, on or before January 1, 2028. Section 4 of this bill includes the following information on the preparation of the report:

- The number and common characteristics of taxpayers claiming the credit.
- The average credit amount on taxpayer tax returns claiming the credit.

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- The number of taxpayers claiming the credit in a taxable year that have not claimed the credit for a previous taxable year.
- An analysis, by county, detailing the number of credits administered by community development corporations, community development financial institutions, community action agencies, and community housing development corporations that received a credit.

The report would be required to be submitted in compliance with Section 9795 of the GC to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, the Senate and Assembly Committees on Appropriations, the Senate Committee on Government and Finance, and the Assembly Committee on Revenue and Taxation.

Section 4 of this bill states, for purposes of complying with RTC section 41, the goals, purposes, objectives, and performance indicators of the CDC tax credits. This section also states that the report required under the GC, discussed above, would be the data collection requirement that would allow the Legislature to evaluate the CDC tax credits.

#### *Effective/Operative Date*

As a tax levy, this bill would be effective immediately upon enactment, and specifically operative for taxable years beginning on or after January 1, 2023, and before January 1, 2028.

#### *Federal/State Law*

##### *New Markets Tax Credit*

Existing federal law allows a New Markets Tax Credit for taxpayers who make an equity investment in specialized financial institutions referred to as a community development entity.

The federal credit is up to 39 percent of the original investment amount and is claimed over a period of seven years (5 percent for each of the first three years and 6 percent for each of the remaining four years). The investment in the Development Entity may not be redeemed before the end of the seven-year period. The federal limit on the total qualified investments from all taxpayers to Development Entities for 2015 through 2019 is \$3.5 billion as extended by the Protecting American from Tax Hikes Act of 2015 (by Public Law (P.L.) 114-113). Pursuant to the Taxpayer Certainty and Disaster Tax Relief Act of 2019, the allocation amount for calendar years 2020 through 2025 was increased to \$5 billion for each calendar year. Any unallocated amount may be carried forward, but not beyond calendar year 2030.

State law does not conform to the New Markets Tax Credit.

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### *Low-Income Housing Credit (LIHC)*

Current federal tax law allows an 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 Allocation Committee allocates and administers the federal and state LIHC Programs.

Current state tax law generally conforms to federal law (Internal Revenue Code (IRC) section 42)) with respect to the LIHC, except that the state LIHC is claimed over four taxable years (rather than 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 (rather than 15 years for federal), and the taxpayer must have either received a federal credit from the Allocation

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

- \$100 million.
- The unused housing credit ceiling, if any, for the preceding calendar years.
- The amount of housing credit ceiling returned in the calendar year.
- \$500,000 per calendar year for projects to provide farmworker housing.

Under RTC section 41, legislation that would create a new tax expenditure, which includes a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state, is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the tax benefit.

### *Implementation Considerations*

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill does not have administrative details necessary to implement the proposed credit and determine its impacts to the department's systems, forms, and processes as discussed below.

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The tax credit allowed under both the PITL and the CTL would be capped at \$20,000,000 per taxable year. It is unclear whether this cap would apply on a per-taxpayer basis or for the aggregate of all taxpayers. For clarity and ease of administration, it is recommended that the bill be amended to include provisions affecting the amount of the credit allowed per taxpayer in the RTC provisions.

This bill limits the credit allocation to \$20,000,000 per calendar year in GC section 12335.6 and limits the credit to \$20,000,000 per taxable year. The bill also limits the credit allocation to an eligible community development corporation to \$100,000-500,000 per fiscal year. For clarity, the author may want to use the same type of year in the credit allocation caps.

This bill, under GC section 12335.6(b)(5), specifies that if an eligible community development corporation is allocated a CDC tax credit, the amount of CDC tax credit that is allocated would be at least one hundred thousand dollars (\$100,000), but would not exceed five hundred thousand dollars (\$500,000), in any one fiscal year. For clarity and ease of administration, it is recommended that the bill be amended to include the above provision in the RTC provisions.

This bill does not specify the minimum credit amount allowed to be allocated to the taxpayer per taxable year. This bill, under GC section 12335.6(b)(5), states that the amount of CDC tax credit that is allocated would be at least one hundred thousand dollars (\$100,000). However, RTC sections 17053.6(a)(2)(A) and 23660(a)(2)(A) state that the minimum investment amount would be equal to or more than one hundred thousand dollars (\$100,000). If the amount of the credit is 50 percent (50%) x the amount invested (\$100,000), then the lowest amount of the credit would be \$50,000. GC section and RTC sections are in conflict.

For ease of administration, it is recommended that any certificates issued by the Treasurer, DCSD, and the eligible community development corporation also include a certificate number and taxpayer identification numbers, and county, for the eligible community development corporation, investors, and any transferees. Unless included on the certificate, the FTB would not have information with respect to the county in which the community development corporations are located. The author may wish to amend the bill to resolve this consideration.

This bill would allow the Treasurer to allocate a portion of CDC tax credits between different taxpayers. Partial allocation could complicate implementation and tracking of CDC tax credit by the FTB.

It is unclear how the FTB would learn that an allocation had been transferred, revoked or otherwise modified by the Treasurer. For clarity and ease of administration, it is recommended that the bill be amended.

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To avoid delayed implementation, it is recommended that the bill be amended to grant the FTB regulatory authority and a waiver from rulemaking procedures required under the Administrative Procedures Act (APA).

This bill, under the GC, would require the FTB to prepare a written report on or before January 1, 2028. The report would be due prior to the FTB having complete data for the final two years of the credit. If the author wants the report to include data on amounts claimed through taxable year 2027, the report date should be moved to no earlier than March of 2030. This date would allow the FTB to include limited data on the amount of carryover credits used on fiscal filers for taxable year 2027.

This bill requires the FTB to report to the Legislature regarding the use of this credit. The FTB would be required to prepare a written report on common characteristics of taxpayers claiming the credit. The "common characteristics" requirement is unclear. The author may wish to amend the bill to specify that the data should be reported by income range, filing status, county, entity type, etc.

#### *Technical Considerations*

For consistency in terminology, insert "form and" before "manner" in Sections 17053.6(a)(3) and 23660(a)(3).

For consistency in terminology, delete the phrase "amount of" before "net tax" in Sections 17053.6(a)(1) and 23660(a)(1).

For clarity, in Section 4(a)(4), it is recommended that the phrase "An analysis, by county, detailing the number of credits administered by community development corporations, community development financial institutions, community action agencies, and community housing development corporations that received a credit" be replaced with "An analysis, by county, detailing the number of eligible community development corporations that are issued a certificate of CDC tax credit allocation or a CDC investor tax credit certificate that they issued to a taxpayer."

#### *Policy Considerations*

The credit does not have a recapture provision if the qualified investment is withdrawn before a specified time period. For example, the expired community development financial institution deposits credit included a recapture provision at the end of the 60<sup>th</sup> month and if not reinvested in another financial institution within 60 days.

Under this bill a taxpayer could receive a credit certificate for a contribution made to an eligible community development corporation. If the organization is also a IRC Section 501(c)(3) organization, the taxpayer could also claim a charitable deduction for the same amount that qualifies for the credit.



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The bill is silent as to the number of months the qualified investment must be held by the taxpayer, or whether the investment may be partially withdrawn. To ensure consistency with the author's intent, it is recommended that the bill be amended.

The credit would be allowed for investments made in an eligible community development corporation outside California.

Under this bill, the eligible community development corporation would issue a CDC investor tax credit certificate. If the author's intent is for the FTB to validate whether the taxpayer met the requirements for the certificate to have been issued pursuant to the statute, the bill would need to be amended.

This bill uses undefined terms "donation equity investment," "charitable contribution," "equity equivalent investment" and "highest quality." The absence of definitions to clarify these terms could lead to disputes with taxpayers. For clarity, it is recommended that the bill be amended.

## **LEGISLATIVE HISTORY**

AB 2922 (Gray, 2019/2020), similar to this bill, under the PITL and the CTL, would have allowed, a credit not to exceed \$20,000,000 per taxable year. The credit amount would have been equal the applicable credit percentage of the amount of each qualified investment made by the taxpayer during the taxable year to an eligible community development corporation that is certified by the Treasurer to receive an allocation of tax credit pursuant to the Community Development Tax Credit Program that would be enacted by this bill under the GC. AB 2922 was held by the Assembly Committee on Revenue and Taxation without further action.

AB 566 (Ridley-Thomas, 2017/2018) would have extended the operative period of the Community Development Financial Institution Deposits Credit to taxable years beginning on or after January 1, 2017, and before January 1, 2019, and would have specified a repeal date of December 1, 2019. AB 566 did not pass by the constitutional deadline.

AB 778 (Caballero, et al., 2017/2018) would have reenacted the community development financial institution deposits credit for taxable years beginning on or after January 1, 2017, and before January 1, 2022. AB 778 was vetoed by the Governor because the credit was not considered during the budget process.

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**PROGRAM BACKGROUND**

State law, for taxable years beginning on or after January 1, 1997, and before January 1, 2017, under the PITL and the CTL, allowed a credit equal to 20 percent of the amount of each qualified investment into a community development financial institution made by a taxpayer during the taxable year. A qualified investment was defined as a deposit that did not earn interest or an equity investment that was equal to or greater than \$50,000 and invested for a minimum duration of 60 months.

State law limited the annual certification of total qualified investments made to Financial Institutions to \$50 million for each calendar year. If the aggregate amount of qualified investments authorized in any calendar year was less than \$50 million, the excess of \$50 million over the actual aggregate qualified investment made in any year could be carried forward to the next year, and any succeeding calendar year up through and including 2017.

**FISCAL IMPACT**

The department’s costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

**ECONOMIC IMPACT**

*Revenue Estimate*

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2950 as Amended on May 3, 2022  
 Assumed Enactment after June 30, 2022

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2022-2023	-\$3.5
2023-2024	-\$10
2024-2025	-\$13

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**

*Support*

None noted.

*Opposition*

None noted.

**ARGUMENTS**

*Proponents*

None noted.

*Opponents*

None noted.

**LEGISLATIVE CONTACT**

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