



Bill Analysis

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Sponsor:

Bill Number: AB 447

Related Bills: See Legislative
History

Amended: June 21, 2021

SUBJECT

Low Income Housing Tax Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), expand the eligibility criteria for buildings that are at risk of conversion for the allocation of Low Income Housing Tax Credit (LIHTC) by the California Tax Credit Allocation Committee (CTCAC). This bill would also expand allocations for eligible projects of new buildings to include retrofitting and repurposing of existing nonresidential structures.

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

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The June 21, 2021, amendments removed provisions of the bill related to the Financial Code and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for this bill is to expand the LIHTC to additional buildings that are at risk of conversion and to allow LIHTC allocation for the retrofitting and repurposing of existing nonresidential structures that were converted to residential use.

ANALYSIS

This bill would add and clarify the additional programs under which an existing multifamily rental housing development would be considered at risk of conversion for purposes of receiving an LIHTC allocation by the CTACC.

Amended: June 21, 2021

An existing property would be considered at risk of conversion if it meets all of the following requirements:

- The property is a multifamily rental housing development with at least 50 percent of the units receive governmental assistance pursuant to specified programs.
- If the development is subject to restrictions on rent and income levels, 50 percent of the units are also restricted to initial occupancy by lower income households, as defined in Section 50079.5 of the Health and Safety Code.
- The restrictions on rent and income levels, except for restrictions recorded under paragraph (2) of subdivision (e) of Section 65863.11 of the Government Code or in connection with interim or acquisition financing, will terminate or the federally insured mortgage or rent subsidy contract on the property is eligible for prepayment or termination any time within five years before or after the date of application to the CTCAC.
- The entity acquiring the property enters into a regulatory agreement that requires the property to be operated in accordance with the federal LIHTC requirements and any further requirements added by the CTCAC.

The existing requirement that a property generally satisfies the federal LIHTC requirements relating to rehabilitation expenditures treated as separate new building, except for the requirement that rehabilitation expenditures are at least the 20 percent of the adjusted basis of the building, would still apply.

For purposes of this provision, "government assistance" would not include the use of tenant-based housing choice vouchers under subsection (o) of Section 1437f of Title 42 of the United States Code, excluding subparagraph (13) relating to project-based assistance. In addition, "restrictions" would not include any rent control or rent stabilization ordinance imposed by a county or city.

This bill would also provide that projects eligible for the additional \$500 million LIHTC allocation include any retrofitting and repurposing of existing nonresidential structures, including, but not limited to, hotels and motels, that were converted to residential use within the previous five years from the date of the application.

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 tax years beginning on or after January 1, 2021.

Amended: June 21, 2021

Federal/State Law

Federal Law

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

The CTCAC allocates and administers the federal and state LIHTC Programs.

State Law

Current state tax law generally conforms to federal law by reference with respect to the LIHTC, except that the state LIHTC is claimed over four taxable years (10 years for federal), is limited to projects located in California, must be allocated and authorized by the CTCAC, rents must be maintained at low-income levels for 30 years (15 years for federal), and the CTCAC must have authorized a federal credit to the taxpayer or the taxpayer must qualify for the federal credit.

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 CTCAC. The CTCAC certifies the amount of LIHTC 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 LIHTC is allocated and managed by the CTCAC; therefore, these changes would not significantly impact the department.

Technical Considerations

None noted.

Policy Considerations

None noted.

Amended: June 21, 2021

LEGISLATIVE HISTORY

AB 1288 (Quirk, et al., 2021/2022), would 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. This bill is currently in the committee process.

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 LIHTC allocations.

SB 1030 (Committee on Housing, Chapter 165, Statutes of 2020) modified the LIHTC, and enacted several housing-related changes under the GC, 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 LIHTC.

AB 10 (Chiu, et al., 2019/2020), among other things, would have increased the LIHTC 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.

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 LIHTC for federally subsidized farmworker housing.

AB 71 (Garcia, et al., 2017/2018) among other things, would have modified the allocation of the LIHTC 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.

Amended: June 21, 2021

ECONOMIC IMPACT

Revenue Estimate

This bill as amended on June 21, 2021, does not change the aggregate amount of LIHTC available for allocation by the CTCAC. However, it may impact the number of projects that receive the credit allocation, but the total amount of credit available would not change. As a result, this bill would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Support

According to Senate Committee on Governance and Finance analysis dated July 5, 2021, State Treasurer Fiona Ma and the California Housing Partnership Corporation are in support of the bill.

Opposition

None noted.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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