BILL ANALYSIS

(Without Reference to File)

CONCURRENCE IN SENATE AMENDMENTS

AB
35 (Chiu and Atkins)

As Amended September 10, 2015

Majority vote. Tax levy

ASSEMBLY:	78-0	(June 4, 2015)	SENATE:		(September 11, 2015)	

(vote not available)

Original Committee Reference: REV. & TAX.

SUMMARY: Modifies the existing Low-Income Housing Tax Credit (LIHTC) program and increases the aggregate credit amount that may be annually allocated to low-income housing projects by $100 million for calendar years 2016 through 2021, inclusive, as provided.

The Senate amendments:

1)Reduce the additional amount of LIHTC that may be annually allocated among low-income housing projects from $300 million to $100 million (thereby increasing the amount currently authorized to be annually allocated from $70 million, as adjusted for inflation, to $170 million, as adjusted for inflation).

2)Authorize the additional annual $100 million allocation of LIHTCs only for calendar years 2016 through 2021, inclusive.

3)Incorporate additional changes to Revenue and Taxation Code Sections 12206, 17058, and 23610.5 proposed by SB 377 (Beall) of the current legislative session, that would become operative if this bill and SB 377 are chaptered, and this bill is chaptered last.

AS PASSED BY THE ASSEMBLY, this bill:

1)Beginning in 2016 and each year thereafter, increased the amount of state LIHTC by an additional $300 million, as adjusted for inflation starting in 2017.

2)Provided that a low-income housing building that has received an award of 9% federal LIHTC is not eligible for an allocation from the additional $300 million of state LIHTC, but shall remain eligible for the existing $70 million allocation, as annually adjusted.

3)Modified the allocation of state LIHTC that may be awarded to a federally subsidized low-income housing project receiving federal 4% LIHTC as follows:

a) A new qualified low-income housing building is eligible for a cumulative state LIHTC over four years of 50% of the qualified basis of the building, provided that the building is not located in a Difficult to Develop Area (DDA) or a Qualified Census Tract (QCT).

b) An existing qualified low-income housing building that is not located in a DDA or a QCT is eligible for a cumulative state LIHTC over four years of 13% of the qualified basis of the building.

c) A new or existing low-income housing building that is located in a DDA or QCT may be awarded a cumulative state LIHTC in an amount not to exceed 50% of the qualified basis of the building, provided that the federal LIHTC is replaced with state LIHTC, as specified.

d) A qualified low-income building is eligible for a cumulative state LIHTC of 95% of the qualified basis over four years if it meets all of the following requirement:

i) Is at least 15 years old;

ii) Serves households with very-low income or extremely low-income residents, as specified;

iii) Is restricted, for a period of not less than 55 years, to serving residents with the average targeted household income of no more than 45% of the area median income; and,

iv) It would receive insufficient state credits, due to the building's low appraised value, to complete

substantial rehabilitation and the rehabilitation will be completed.

4)Revised the definition of a "taxpayer" for purposes of the state LIHTC program to include members of a limited liability company.

5)Revised the definition of a "housing sponsor" for purposes of the LIHTC program to include a limited liability company.

6)Added the following definitions:

a) "Extremely low-income" has the same meaning as Health and Safety Code (H&SC) Section 50053; and,

b) "Very low-income" has the same meaning as in H&SC Section 50053.

1)Made technical, non-substantive changes to the provisions of the LITHC program.

2)Took effect immediately as a tax levy.

FISCAL EFFECT: Unknown

COMMENTS:

1)Author's Statement. The author has provided the following statement in support of this bill:
California's shortfall of 1.5 million affordable rentals impedes our state's economic growth by

slowing job creation and driving Californians into

poverty. When housing costs are accounted for, the proportion of people unable to meet their basic needs - food, shelter, transportation - rises from 16 percent to 23 percent, the highest rate of poverty in the nation.

A recent report from the California Housing Partnership depicts a growing statewide crisis driven by a growing divide between incomes and rents. Statewide, median incomes have fallen 8 percent since 2000; meanwhile, rental prices have soared by 21 percent in the same timeframe. There isn't a single county in California with enough affordable rentals for families struggling to make ends meet.

Rising rents are locking broad swaths of Californians - people who are key contributors to our communities - out of San Francisco, San Diego and many other California cities and crowding their families into unsafe housing. Twenty-one of the nation's least affordable cities are in California; our home-health aides, child-care workers, and teachers' assistants have virtually nowhere to live in the communities where they work, even if they work full-time.

Small businesses and creators of entry-level jobs face particular difficulties recruiting employees. Closing our communities to struggling workers reverberates through our entire economy and impacts all taxpayers.'

California leaders must act to replace the $1.5 billion annual state investment wiped out when voter-approved housing bonds were expended and redevelopment funding was eliminated. AB 35 would take a step in the right direction by increasing the

California Low-Income Housing Tax Credit, a proven public-private-partnership model, by $300 million per year, and enable the state to attract $600 million in additional federal funding that would otherwise not come to California.

2)State LIHTC Program. In 1987, the Legislature authorized a state LIHTC Program to augment the federal tax credit program. State tax credits can only be awarded to projects that have also received, or are concurrently receiving, an allocation of the federal LIHTCs. The amount of state LIHTC that may be annually allocated by the California Tax Credit Allocation Committee (TCAC) is limited to $70 million, adjusted for inflation. In 2014, the total credit amount available for allocation was $103 million (representing all four years of allocation) plus any unused or returned credit allocations from previous years.
Current state tax law generally conforms to federal law with respect to the LIHTC, except that it is limited to projects located in California. While the state LIHTC program is patterned after the federal LIHTC program, there are several differences. First, investors may claim the state LIHTC over four years rather than the 10-year federal allocation period. Second, the rates used to determine the total amount of the state tax credit (representing all four years of allocation) are 30% of the qualified basis of a project that is not federally subsidized and 13% of the qualified basis of a project that is federally subsidized, in contrast to 70% and 30% (representing all 10 years of allocation on a present-value basis), respectively, for purposes of the federal LIHTCs. Furthermore, state tax credits are not available for acquisition costs, except for previously subsidized projects that qualify as "at-risk" of being converted to market rate.

TCAC is authorized to replace federal LIHTC with state LIHTC of up to 30% of a project's eligible basis if the federal LIHTC is reduced in an equivalent amount. This provision allows TCAC to increase the number of projects funded with the limited federal credits in a given year. As discussed, the

maximum federal tax credit that can be awarded (the 9% credit) is generally equal to 70% (on a present-value basis) of a taxpayer's qualified basis in the project, spread over a 10-year period. Thus, a project that receives the maximum in both state and federal credits receives an amount equal to 100% of the taxpayer's qualified basis over a 10-year period.

3)SB 377 Proposes Additional Changes to the LIHTC Program. SB 377 would allow taxpayers to sell LIHTCs to existing investors in any low-income housing project in California and would remove the sunset date on provisions relating to the bifurcation of federal and state LIHTCs. Both SB 377 and this bill, if enacted, would amend the same Revenue and Taxation Code sections. Generally, in the absence of "any express provision to the contrary in a bill which is chaptered last, the last (higher) chapter law prevails. Consequently, unless some consideration is made for the earlier chaptered bill, the last chaptered bill will eliminate any changes proposed by the earlier bill." [George H. Murphy, Legislative Counsel, Legislative Drafting Manual (1975).] To avoid this so-called "chaptering out" problem, this bill incorporates the changes proposed to the LIHTC program by SB 377.

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