Date of Hearing: March 30, 2016

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
AB 2140 (Roger Hernández) – As Amended March 28, 2016

SUBJECT: Income taxes: insurance tax: credits: low-income housing: farmworker housing assistance

SUMMARY: Makes changes to the farmworker housing tax credit set-aside within the Low Income Housing Tax Credit (LIHTC) Program. Specifically, **this bill**:

1) Redefines "farmworker housing" to mean housing which is available to and occupied by not less than 50% of farmworkers and their households.

2) Allows farmworker housing developments that receive 4% federal LIHTCs that are in qualified census tracts (QCT) or designated development areas (DDA) to receive state LIHTCs.

3) Makes qualified farmworker housing developments eligible for state LIHTC of 75% of the qualified basis of the building over four years.

EXISTING LAW:

1) Defines "farmworker" housing to mean housing for agricultural workers that is available to and occupied only by farmworkers and their households.

2) Allows Tax Credit Allocation Committee (TCAC) to permit an owner to temporarily house nonfarmworkers in vacant units in the event of a disaster or other critical occurrence provided there are no pending qualified farmworker applications for residency.

3) Defines a QTC as any census tract designated by the Department of Housing and Urban Development (HUD) in which either 50% or more of the households have an income that is less than 60% of the area median gross income or that has a poverty rate of at least 25%.

4) Defines a DDA as an area designated by HUD on an annual basis that has high construction, land, and utility costs relative to area median gross income.

5) Allows TCAC to award state LIHTCs to developments in a QCT or a DDA if the project is also receiving federal LIHTC, under the following conditions:

   a) Developments restrict at least 50% of the units to special needs households; and

   b) The state credits do not exceed 130% of the eligible basis of the building.

6) Allows TCAC to replace federal LIHTC with state LIHTC of up to 130% of a project's eligible basis if the federal LIHTC is reduced in an equivalent amount.

FISCAL EFFECT: Unknown. Tax levy. 2/3 vote

COMMENTS:

Background:

In 1986, the federal government authorized the Low-Income Housing Tax Credit (LIHTC) program to enable affordable housing developers to raise private capital through the sale of tax benefits to investors. The federal program offers 9% and 4% credits on the approximate percentage of a project's "qualified basis" a taxpayer who purchases credits from a developer may deduct from their annual federal tax liability in each of ten years. TCAC administers the program and awards credits to qualified developers who can then sell those credits to private investors who use the credits to reduce their federal tax liability. The developer in turn invests the capital into the affordable housing project.

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 also receive federal LIHTCs, except for farmworker housing projects, which can receive state credits without federal credits. Investors claim the state credit over four years. Projects that receive either state or federal tax credits are required to keep the housing at affordable levels for 55 years. Both the federal and state tax credits are capped, which limits the amount of credit that TCAC can award each year. Each state receives an annual ceiling of federal credits. In 2015 it was $2.30 per capita, which worked out to $94 million in credits in California that can be taken by investors each year for 10 years. Federal 9 % LIHTCs are oversubscribed by a 3:1 ratio.

Federal law requires TCAC to conduct a feasibility study on every project to ensure that the amount of tax credits allocated do not exceed the amount required to make the project feasible. To calculate the amount of tax credits a project may receive, TCAC determines the total project cost. Next, it determines the "eligible basis" by subtracting the non-depreciable costs, such as land, permanent financing costs, rent reserves, and marketing costs. However, the eligible basis is reduced by the applicable percentage, a measure of the amount of affordable units of floor space in the project as a share of the entire project. For example, a project with $5 million in total development costs but $1 million in land acquisition costs has a $4 million basis. If half of the units will be affordable, the total basis is $2 million, which is multiplied by 9% to determine the annual amount of the credit of $180,000, for a ten-year value of $1.8 million.

In 1996, the Legislature created the Farmworker Housing Assistance Tax Credit Program and set aside $500,000 a year from the LIHTC allocation for farmworker housing projects. In an effort to streamline administration and make the farmworker program more user-friendly, SB 1247 (Lowenthal), Chapter 521, Statues of 2008, eliminated the Farmworker Housing Assistance Tax Credit Program as a separate program and consolidated it into the state LIHTC program as a farmworker set-aside. The amount of funding dedicated to farmworker housing remained the same. The amount of the credit accrues over time and there is $5,047,118 available.

Purpose of the bill: According to the author, "AB 2140 makes improvements to the farmworker housing assistance tax credit program to better facilitate its use of this financing tool. Over the years, the State Treasurer's Office has made changes to improve the broader housing tax credit program, however, the farmworker tax credit has not benefited from some of those policy changes. In fact, given the fiscal and policy constraints of the existing farmworker housing tax credit, no project since 2008 had been awarded tax credits until last year. The underinvestment in farmworker housing has created hardships for this labor force and their families. This bill seeks to bolster the legislative intent behind the farmworker housing assistance tax credit program and improve the efficacy and flexibility of this financial resource for developers of farmworker housing. "

<u>Changes proposed to the farmworker housing tax credit program:</u>

AB 2140 changes several components of the LIHTC program set-aside for farmworker housing developments in an effort to make the projects more feasible and increase the supply of farmworker housing.

<u>Occupancy requirements</u>: To qualify for LIHTCs, occupancy in farmworkers developments must be limited to farmworkers and their families, except that TCAC can allow owners to temporarily house non-farmworkers in vacant units during a disaster. AB 2140 would reduce the occupancy requirement from 100% farmworkers and their families to 50%. In some cases, a tenant in a farmworker housing development may begin their tenancy employed as a farmworker but change employment while living in the development. The change in employment can jeopardize their tenancy in the project. Reducing the occupancy to 50% will provide great flexibility to developers in responding to this and other types of challenges.

<u>Increased access to state credits</u>: AB 2140 also seeks to increase the amount of credits that farmworker tax credit projects can receive in order to make the credits more valuable and to allow greater leveraging of other bonding authority. Federal LIHTC can be used anywhere in the state, but projects are given an additional 30% boost on their eligible basis if the project is located in a DDA or a QCT. Because these areas by definition have a higher-poverty level and there is a higher concentration of extremely low-income or homeless individuals and families, housing needs deeper subsidy to make it affordable. Existing state law does not allow state tax credits to be awarded in DDAs and QCTs with one exception: housing developments where 50% of the units are for special needs populations. The rationale for this prohibition is projects in these areas can qualify for more federal tax credits and therefore are already advantaged.

AB 2140 would allow state tax credits to be awarded to farmworker housing projects without regard to DDA or QCT status with the main purpose of making the state credits more valuable and providing enough state tax credits to match the value of a 9% federal tax credit. Allowing state credits to be used for farmworker projects in DDAs and QCTs would increase the equity projects could generate from tax credits because the projects can already qualify for more federal tax credits than projects outside of a DDA or a QCT. As an example, if a project qualifies for $10 million in eligible basis in a DDA or QCT, the project could get up to 130% of that basis in federal tax credits, which means the project sponsor, would have $13 million in federal credits to sell to an investor. This bill would allow that project to get an additional 30% in state tax credits against the $10 million in eligible basis, which would create an additional $3 million in state tax credits.

The amount of federal 9% credits available each year are capped, however 4% federal credits are unlimited. The value of the 4% tax credits are less than half of the 9% tax credits and, as a result, 4% federal credits are generally used in conjunction with another funding source like state housing bonds or local funding sources. In addition, federal 9% credits are oversubscribed where as 4% federal credits are less highly subscribed. AB 2140 would encourage developers constructing farmworker housing to apply for 4% federal credits by increasing the value of the state credits that would accompany those credits. Developers that receive 4% federal credits would receive state credits that would be worth 75% of the projects eligible basis over four years. Under existing law, state LIHTC are worth 30% of the projects eligible basis over four years.

Related legislation: AB 2817 (Chiu) proposes to increase the LIHTC by $300 million on an annual basis and increase the set-a-side for farmworker housing tax credits within that pool from $500,000 to $25 million. Any funds not used for farmworker housing tax credit projects in a calendar year would be available to other qualified projects that apply for the larger LIHTC pool. This bill is pending hearing in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition for Rural Housing
California Housing Consortium
California Rural Legal Assistance Foundation
Housing California
Non-Profit Housing Association of Northern California (NHP)

Opposition

None on File

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