Date of Hearing: March 30, 2016

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
AB 2817 (Chiu) – As Amended March 17, 2016

SUBJECT: Taxes: credits: low-income housing: allocation increase

SUMMARY: Makes changes to the state Low-Income Housing Tax Credit (LIHTC) Program. Specifically, **this bill**:

1) Beginning in 2017, and each year thereafter, increases the allocation of state LIHTC by an additional $300 million and adjusts that amount for inflation beginning in 2018.

2) Beginning in 2017, increase the amount of low-income housing tax credits set-aside for farmworker housing from $500,000 to $25 million.

3) Provides that any low-income housing tax credits set-aside for farmworker housing developments that go unused of the $25 million will be available for qualified nonfarmworker housing projects.

4) Provides that a sponsor that receives an award of 9% federal LIHTC cannot receive an allocation from the additional $300 million of state LIHTC but shall remain eligible for the $70 million allocation available prior to 2016.

5) Provides a newly constructed or the rehabilitation portion of an existing low-income housing project that is not located in a Difficult to Develop Area (DDA) or a Qualified Census Tract (QCT) and receives federal 4% LIHTC is eligible for cumulative state LIHTC over four years of 50% of the qualified basis of the building.

6) Provides the acquisition portion of an existing low-income housing project that is not located in a DDA or a QCT and receives federal 4% LIHTC is eligible for state LIHTC over four years of 13% of the qualified basis of the building.

7) Allows the Tax Credit Allocation Committee (TCAC) to replace federal LIHTC with state LIHTC for a new or existing low-income housing project that is a located in a DDA or QCT and receives federal 4% LIHTC of up to 50% of the qualified basis of the building, provided that the total amount of credits does not exceed 130%.

8) Provides that a low-income housing project is eligible for a cumulative state LIHTC of 95% of the qualified basis of the building over four years of the eligible basis if it meets all of the following requirements:

   a) It is at least 15 years old;

   b) It is a single room occupancy (SRO), special needs housing building, is in a rural area, or serves households with very-low income or extremely low-income residents;

   c) It is serving households of very low-income or extremely low-income provided that the average income at the time of admission is no more than 45% of the median gross income adjusted for household size; and

d) It would have insufficient state credits to qualify to complete substantial rehabilitation due to a low appraised value.

9) Adds the following definitions:

a) "Extremely low-income" has the same meaning as Health and Safety Code Section 50053.

b) "Rural area" means a rural area as defined in Health and Safety Code Section 50199.21.

c) "Special needs housing" has the same meaning as paragraph (4) of Subdivision (g) of Section 10325 of Title 4 of the California Code of Regulations.

d) "SRO" means single room occupancy.

e) "Very low-income" has the same meaning as in Health and Safety Code Section 50053.

EXISTING LAW:

1) 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.

2) 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.

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) Provides that a low-income housing development that is a new building and is receiving 9% federal LIHTC credits is eligible to receive state LIHTC over four years of 30% of the qualified basis of the building.

6) Provides that a low-income housing development that is a new building that is receiving federal LIHTC that is "at risk of conversion" is eligible to receive state LIHTC over four years of 13% of the qualified basis of the building.

7) Defines "at risk of conversion" to mean a property that satisfies all of the following criteria:

a) A multifamily rental housing development in which at least 50% of the units receive government assistance pursuant to any of the following:

b) Project based Section 8 vouchers;

c) Below-Market-Interest-Rate Program;

d) Federal Rental Housing Assistance Program;

e) Programs for rent supplement assistance pursuant to Section 101 of the Housing and Urban Development Act of 1965;

f) Programs pursuant to Section 515 of the Housing Act of 1949; and

g) Federal LIHTC.

8) Includes an urgency clause.

FISCAL EFFECT: Unknown.

COMMENTS:

Background:

In 1986, the federal government authorized the LIHTC program to enable affordable housing developers to raise private capital through the sale of tax credits to investors. Two types of federal tax credits are available and are generally referred to as nine percent (9%) and four percent (4%) credits. 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.

Each state receives an annual ceiling of 9% federal tax 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 LIHTCs are oversubscribed by a 3:1 ratio. Unlike 9% LIHTC, federal 4% tax credits are not capped, however they must be used in conjunction with tax-exempt private activity mortgage revenue bonds which are capped and are administered by the California Debt Limit Allocation Committee. In 2015, the state ceiling for private activity bonds is set at $5.61 billion. 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 2014, developers only used $80.5 million in annual federal 4% tax credits, significantly less than prior years. The loss of redevelopment funding and state housing bond funds, which were used in combination with 4% federal credits to achieve higher affordability, has made the 4% federal credits less effective.

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 can claim the state credit over four years. TCAC has authority for approximately $103 million in state tax credits each year but has as many as $25 million in credits remaining at the end of the year due to lack of demand. Projects that receive either state or federal tax credits are required to maintain the housing at affordable levels for 55 years.

Purpose of this bill:

According to the author, "California is undergoing a serious housing affordability crisis with a shortfall of over one million affordable homes. According to a 2014 report by the California Housing Partnership Corporation, median rents in California have increased by over 20 percent while the median income has dropped by 8 percent. The private housing market is simply not meeting the demand for low to moderate income homes. The shortage is particularly challenging in the rental market, typically the last resort for lower-income households, many of whom were forced out of single-family homes during the great recession.
State and Federal divestment in affordable housing has exacerbated this problem. With the elimination of California's redevelopment agencies and the exhaustion of state housing bonds, California has reduced its funding for the development and preservation of affordable homes by 79 percent -- from approximately $1.7 billion a year to nearly nothing. There is currently no permanent source of funding to compensate for this loss.

The housing crisis has contributed to a growing homeless population, increased pressure on local public safety nets, an unstable development and construction marketplace, and the outward migration of thousands of long-time California residents.

The LIHTC program is the only major source of funding available for affordable development in the state, making it competitive and overprescribed. In 2014, only 49 percent of applicants were awarded credits – leaving many qualified projects without a secure source of funding or any incentive to build additional affordable housing units."

The proposal:

AB 2517 would increase the state LIHTC allocation by an additional $300 million which would allow the state to leverage and additional $200 million in federal 4% LIHTC and at least $400 million in federal tax-exempt bond authority annually for the creation and preservation of affordable rental homes for a broad range of lower income households through the state. An increase in the amount of state LIHTC would help to fill the gap in funding that was created by the loss of redevelopment and the exhaustion of state voter-approved bonds. In addition to increasing the total amount of state LIHTC, AB 2517 proposes to increase the amount of state tax credits awarded to a project that is also receiving 4% federal tax credits from 13% to 50% of the qualified basis. This would more than triple the amount of equity that an investor purchasing a state tax credit would receive which would bring the return on 4% credits in line with 9% credits and result in greater affordability for the project.

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 deep 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 2517 would also allow state tax credits to be awarded to projects without regard to DDA or QCT status with the main purpose of providing enough state tax credits to match the value of a 9% federal tax credit.

Farmworker Housing: Last year the author carried AB 35 which was largely similar to this bill. AB 2817 is different in that it includes a set-aside from the $300 million increase to the LIHTC program of $25 million for farmworker housing. There is currently a $500,000 set-aside of low-

income housing tax credits for farmworker housing developments serving farmworkers and their families. AB 2817 would require any unused credits from the $25 million set-aside to go to qualified nonfarmworker housing projects that don't receive funding under the main program.

Older housing stock:

Many low-income housing developments in the state are older and in need of rehabilitation. These projects need higher levels of equity investments because of their age, level of repairs needed, and the low rents. It is hard for these projects to compete for state tax credits because the assessed value is low and therefore the eligible basis upon which the amount of tax credits the project can qualify for is also low. To assist these projects, AB 2517 would allow these older projects to receive state tax credits of 95% over four years. To qualify projects would need to be at least 15 years old, serve low- and extremely low-income households, be an SRO, in a rural area, and have insufficient state credits to complete substantial rehabilitation due to a low appraised value.

Related legislation: Last year, AB 35 (Chiu) would have made similar changes to this bill. That bill was vetoed; the Governor's veto message stated the following:

> *I am returning the following nine bills without my signature:*
>
> *Assembly Bill 35*
> *Assembly Bill 88*
> *Assembly Bill 99*
> *Assembly Bill 428*
> *Assembly Bill 437*
> *Assembly Bill 515*
> *Assembly Bill 931*
> *Senate Bill 251*
> *Senate Bill 377*
>
> *Each of these bills creates a new tax credit or expands an existing tax credit.*
>
> *Despite strong revenue performance over the past few years, the state's budget has remained precariously balanced due to unexpected costs and the provision of new services. Now, without the extension of the managed care organization tax that I called for in special session, next year's budget faces the prospect of over $1 billion in cuts.*
>
> *Given these financial uncertainties, I cannot support providing additional tax credits that will make balancing the state's budget even more difficult. Tax credits, like new spending on programs, need to be considered comprehensively as part of the budget deliberations.*

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association (CBIA)
California Chamber of Commerce

California Housing Consortium
California Rural Legal Assistance Foundation
Housing California
League of California Cities
Santa Clara County Board of Supervisors
The Arc California
United Cerebral Palsy California Collaboration
Western Center on Law and Poverty

Opposition

None on File

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