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## SENATE COMMITTEE ON HOUSING

Senator Scott Wiener, Chair

2019 - 2020 Regular

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<b>Bill No:</b>	AB 3308	<b>Hearing Date:</b>	8/6/2020
<b>Author:</b>	Gabriel		
<b>Version:</b>	7/21/2020		
<b>Urgency:</b>	No	<b>Fiscal:</b>	No
<b>Consultant:</b>	Alison Hughes		

**SUBJECT:** School districts: employee housing

**DIGEST:** This bill allows school districts to restrict occupancy of affordable housing on school district-owned land, funded with low income housing tax credits (LIHTC), to teachers and school district employees of the school district that owns the land. It further allows public employees to also occupy the housing constructed under this provision.

### **ANALYSIS:**

#### *Existing law:*

- 1) Pursuant to the Teacher Housing Act of 2016:
  - a) Defines “teacher or school district employee” as any person employed by a unified school district maintaining prekindergarten, transitional kindergarten, and grades 1-12 inclusive, an elementary school district maintaining prekindergarten, transitional kindergarten, and grades 1-8 inclusive, or a high school district employing grades 1-12 inclusive, including but not limited to certificated and classified staff.
  - b) Creates a state policy supporting housing for teachers and school district employees and further permits school districts and developers in receipt of local or state funds or tax credits designated for affordable rental housing to restrict occupancy to teachers and school district employees on land owned by school districts, so long as that housing does not violate any other applicable laws.
  - c) Limits this act to teacher or school district employees.
- 2) Enacts the Unruh Civil Rights Act, which specifically outlaws discrimination in California based on sex, race, color, religion, ancestry, national origin, age, disability, medical condition, genetic information, marital status, or sexual orientation.

- 3) Enacts the Fair Employment and Housing Act, which prohibits the existence of a restrictive covenant that makes housing opportunities unavailable based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income or ancestry.

**This bill:**

- 1) Provides that a school district may also allow local public employees to occupy teacher and school employee housing created by the Teacher Housing Act of 2016. Defines “local public employees” to include employees of a city, county, or city and county, charter city, charter county, charter city and county, special district or combination thereof.
- 2) Allows projects restricted for teachers and school district employees to permit school districts to restrict occupancy on land owned by school districts to teachers and school district employees of the school district that owns the land, so long as that housing does not violate any applicable laws. The California Fair Employment and Housing Act and the Unruh Civil Rights Act shall apply to any program authorized by this bill, except to the extent those laws would prohibit restricting units to teachers or district employees.
- 3) Authorizes a school district to retain the right to prioritize school district employees over local public employees to occupy housing.
- 4) Includes a severability clause. If any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or application that can be given effect without the invalid provision or application.

**COMMENTS**

- 1) *Author’s statement.* “We are in the midst of a serious affordable housing crisis and we should work with every partner and use every tool available to address it. AB 3308, will provide some much needed clarity that will ensure school districts can and will continue building affordable housing for teachers and school employees.”
- 2) *Low Income Housing Tax Credits (LIHTC).* Most affordable housing created in the state is funded in part by federal and state LIHTC. LIHTC are used to develop housing for households that make up to 80% of the area median income (AMI). California receives an allocation of federal tax credits each year based on a per-resident formula. In 2020, the state awarded \$1.06 billion in federal

tax credits. In 1987, the Legislature authorized the creation of a state LIHTC program to augment the federal tax credit program. The state tax credit program has an ongoing statutory authorization of \$70 million. The 2019-20 budget authorized an additional \$500 million for state tax credits and the Governor's May budget continues this allocation for the 2020-21 budget year.

Generally under federal Internal Revenue Service (IRS) rules, if a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for federal LIHTC. However, federal IRS law also states that a qualified LIHTC project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (1) with special needs, (2) who are members of a specified group under a federal program or state program or policy that supports housing for such a specified group, or (3) who are involved in artistic or literary activities.

- 3) *Teacher Housing Act of 2016*. In 2016, SB 1413 (Leno, Chapter 732) established the Teacher Housing Act of 2016 to facilitate the acquisition, construction, rehabilitation, and preservation of affordable housing for teachers and school employees. School districts are authorized to establish and implement programs that address the housing needs of teachers and school district employees by leveraging funding sources including state, federal, local, public, private and resources available to housing developers, promoting public and private partnerships, and fostering innovative financing opportunities. SB 1413 also created a state policy supporting the use of federal and state LIHTC to fund housing for teachers and school district employees on land owned by the school district and permitting school districts to restrict occupancy to teachers and school district employees.

The intent of SB 1413 was to provide express state statutory authority to permit school districts to construct housing on their property and limit the occupancy to teachers and school districts employees. As mentioned above, federal law creates an exemption to the "general use" requirement that allows the use of federal and state tax credits if a state establishes a policy or program that supports housing for such a specified group. AB 1413 established this policy by allowing school districts to restrict occupancy of affordable housing on school district land constructed with federal or state low-income housing tax credits to the teachers and school district employees.

By declaring a state policy supporting housing for teachers/school district employees, these housing projects could qualify under federal law as general public housing and therefore be eligible for both federal and state LIHTCs.

- 4) *Limiting occupancy to employees of a specific district.* The Los Angeles Unified School District (LAUSD) applied for LIHTC to fund the construction of affordable housing on their land and planned to restrict occupancy to employees of LAUSD. Their application, however, was rejected under the previous leadership of the California Tax Credit Allocation Committee (TCAC) who did not agree that the statute or IRS law authorizes LIHTC to be used to fund affordable housing limited to one employer. Since that time, the leadership at TCAC has changed and the new Executive Director has provided a different interpretation of the statute and IRS law and has indicated that she would recommend that the Committee award LIHTC to a housing development that restricts occupancy to an individual employer.

Existing law authorizes school districts to restrict occupancy of affordable housing created using LIHTC on school district land to teachers and school district employees. The statute is ambiguous as to whether or not affordable housing constructed on school district land using tax credits can be restricted to employees of one school district. This bill would explicitly allow a school district to limit occupancy of housing funded with LIHTC to employees of a school district on land owned by that school district. This bill further expands the Teacher Housing Act to permit local public employees to occupy teacher and school district employee housing. A school district may, however prioritize school district employees over local public employees to occupy housing.

- 5) *Permitting local public employees to occupy school district housing.* The Redwood City Unified School District currently owns and operates their district office located in downtown Redwood City. Multiple stories of the Redwood City Unified School District headquarters building are currently vacant, which could be renovated and used for an affordable housing project. The District has made attempts to secure financing for the project, however there are too few school employees who would meet the eligibility requirements for tax credits. Given the shortage of eligible occupants of a school district employee housing development, this bill further expands the Teacher Housing Act to permit local public employees to occupy teacher and school district employee housing. This bill provides, however, that a school district may, however prioritize school district employees over local public employees to occupy housing.

#### **RELATED LEGISLATION:**

**SB 1413 (Leno, Chapter 732, Statutes of 2016)** — established the Teacher Housing Act of 2016 and provided that a school district may establish and implement programs that address the housing needs of teachers and school district employees who face challenges in securing affordable housing.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: No    Local: No

**POSITIONS: (Communicated to the committee before noon on Friday,  
July 24, 2020.)**

**SUPPORT:**

Los Angeles Unified School District (Sponsor)  
California Federation of Teachers  
California School Employees Association  
California YIMBY  
City of Redwood City  
Mercy Housing  
San Diego Unified School District  
San Fernando Valley Young Democrats  
San Francisco Unified School District  
Southern California Association of Nonprofit Housing

**OPPOSITION:**

None received.

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