SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No:	AB 1654	**Hearing Date:**	06/13/2022
Author:	Robert Rivas		
Version:	5/2/2022		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alison Hughes		

SUBJECT: Low-income housing: insurance tax: income tax: credits: farmworker housing

DIGEST: This bill increases the set-aside of the low income housing tax credits (LIHTC), authorized in the state budget each year, for farmworker housing projects and requires the Department of Housing and Community Development (HCD) to create a comprehensive strategy to address farmworker housing needs in the state.

ANALYSIS:

Existing law:

1) Provides that a low-income housing development that is a new building and is receiving 9% federal Low-Income Housing Tax Credits (LIHTCs) is eligible to receive state LIHTC over four years of 30% of the eligible basis of the building.

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

3) Provides, for 2020 and 2021 calendar years, that up to $500 million may be allocated to 4% tax credit projects pursuant to an authorization in the annual budget or related legislation.

4) Sets-aside five hundred thousand dollars ($500,000) per calendar year for projects to provide farmworker housing, as defined.

This bill:

1) Requires, beginning in 2024 through 2034, that $25 million or 5% of the amount available in the state budget each year for the LIHTC, whichever is less, be set aside for projects that provide farmworker housing.

2) Requires that any LIHTC that are unallocated from the farmworker housing set-aside after three years revert into the larger pool and be allocated pursuant to existing law.

3) Provides that beginning in 2035 and every year thereafter, the amount of LIHTC set aside for farmworker housing will be determined by the Legislature upon consideration of a comprehensive strategy developed by HCD.

4) Requires HCD, on or before July 1, 2023, to commission a statewide study of farmworker housing conditions, needs, and solutions to inform a comprehensive strategy for meeting the housing needs of the state's farmworkers.

5) Requires the study to include an analysis and recommendations on the following factors related to the supply of housing affordable and accessible to farmworkers and their families:

   a) A demographic survey and analysis of farmworkers in California, including a survey of a representative sample of farmworkers to assess the needs, barriers, and proposed solutions to the farmworker housing crisis from the perspective of impacted farmworkers;
   b) An analysis of the unmet need for housing for farmworkers, including migrant households;
   c) An analysis of existing housing conditions for farmworkers, including, but not limited to, permanent and temporary rental housing in the private market, owner-occupied housing, deed-restricted affordable rental housing, employer-provided housing, generational wealth opportunities, and state-owned migrant housing;
   d) An analysis of the trends in agricultural employment statewide and regionally that impact the housing demand among farmworkers, including the demand for specified housing types;
   e) An analysis of best practices to increase input from farmworkers and employers on the housing needs in their specific communities;
   f) Governmental and nongovernmental barriers to the production of housing to meet the needs of farmworkers, including, but not limited to, the availability of financing, local land use controls, and the availability of suitable land;
   g) Any additional analysis, research, or surveys relevant to analyzing the need for housing for farmworkers; and

h) Recommendations to address gaps in the supply of housing for farmworkers.

6) Allows the author of the study to subcontract with other qualified entities as necessary to obtain data described to complete the report.

7) Requires HCD, no later than January 1, 2026, to develop a comprehensive strategy to substantially improve policy, funding, and implementation of farmworker housing production in California to adequately address the size and scope of the problems identified in the study, including amendments to the California Statewide Housing Plan.

8) Requires HCD to update and revise the comprehensive strategy developed pursuant to this subdivision every five years and submit it to the Legislature.

COMMENTS:

1) *Author's statement.* "AB 1654 will require the California Department of Housing and Community Development (HCD) to commission a statewide study on the lack of affordable and accessible farmworker housing. HCD will contract with trusted messengers (such as local non-profits) in farmworker communities to conduct this study. HCD will then use that analysis of the barriers, unmet needs, existing housing conditions, and trends in agricultural employment statewide and regionally to improve policy and potentially increase funding for farmworker housing production. Using the study and its recommendations, HCD will develop a comprehensive strategy to address the lack of farmworker housing and the existing barriers that prevent farmworkers from obtaining housing for themselves and their families.

   Meanwhile, AB 1654 will also create a minimum, annual set-aside of dedicated tax credits—$25 million or 5% of all affordable housing tax credits, whichever is less, for ten years—for farmworker housing. Most state programs that include a set-aside for housing in rural areas already allow 10% or more for those programs. AB 1654 will simply establish a floor for farmworker housing funds. After ten years, the Legislature may adjust this amount as necessary, per the recommendations of the farmworker housing study. Together, these important measures will put California on a path to addressing our farmworker housing shortage and ensuring decent living conditions for all farmworkers."

2) *Background of the federal LIHTC program.* The LIHTC is an indirect federal subsidy developed in 1986 to incentivize the private development of affordable rental housing for low-income households. The federal LIHTC program enables low-income housing sponsors and developers to raise project equity

through the allocation of tax benefits to investors. 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.

Two types of federal tax credits are available: the 9% and 4% credits. These terms refer to the approximate percentage of a project's "eligible basis" a taxpayer may deduct from their annual federal tax liability in each year for 10 years. "Eligible basis" means the cost of development excluding land, transaction costs, and costs incurred for work outside the property boundary. For projects that are not financed with a federal subsidy, the applicable rate is 9%. For projects that are federally subsidized (including projects financed more than 50% with tax-exempt bonds), the applicable rate is 4%. Although the credits are known as the "9% and 4% credits," the actual tax rates fluctuate every month, based on the determination made by the Internal Revenue Service on a monthly basis. Generally, the 9% tax credit amounts to 70% of a taxpayer's eligible basis and the 4% tax credit amounts to 30% of a taxpayer's eligible basis, spread over a 10-year period.

Each year, the federal government allocates funding to the states for LIHTCs on the basis of a per-resident formula. In California, TCAC is the entity that reviews proposals submitted by developers and selects projects based on a variety of prescribed criteria. Only rental housing buildings, which are either undergoing rehabilitation or newly constructed, are eligible for the LIHTC programs. In addition, the qualified low-income housing projects must comply with both rent and income restrictions.

Each state receives an annual ceiling of 9% federal tax credits and they 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 CDLAC. In 2020, the state ceiling for private activity bonds was set at $4.1 billion. The value of the 4% tax credits is 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.

3) *Background of the 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 TCAC is limited to $70

million, adjusted for inflation. In 2020, the total credit amount available for allocation was about $100 million 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 eligible basis of a project that is not federally subsidized and 13% of the eligible 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.

Combining federal 9% credits (which amounts to roughly 70%) with state credits (which amounts to 30%) generally equals 100% of a project's eligible basis. Combining federal 4% credits (which amounts to roughly 30%) with state credits (which amounts to 13%), only results in 43% of a project's eligible basis.

4) *Farmworker tax credit set-aside.* The LIHTC program provides up to $500,000 for farmworker housing projects. While the overall program has become competitive in recent years, historically, the number of farmworker housing projects accessing the LIHTC program is low. In 2017, AB 571 (E. Garcia, Chapter 372) made several changes to the farmworker housing tax credit to make the projects more competitive. Changes included allowing projects to offer 50% of the units to non-farmworker households if they meet the income requirements. In addition, AB 571 increased the amount of credits that farmworker tax credit projects could receive by allowing farmworker housing projects to qualify for a 30% boost in federal credits.

5) *Study and Comprehensive Strategy.* HCD recently published the Statewide Housing Plan laying out a 10-year plan detailing reasons to respond to the housing affordability crisis, what we have done so far, what needs to be done going forward, and how to track progress. The plan does not include specific strategies to address the challenges facing farmworkers and their families. This bill would require HCD to commission a study to determine what barriers exist for increasing the supply of farmworker housing on or before July 1, 2023.

HCD would use that study to develop a comprehensive strategy, by January 1, 2026, to substantially improve policy, funding, and implementation of farmworker housing production in California. This bill would require HCD to amend the Statewide Housing Plan to implement the recommendations from the strategy.

6) *Double-referral.* This bill was also referred to the Committee on Governance and Finance.

RELATED LEGISLATION:

AB 571 (Garcia, Chapter 372, Statutes of 2017) — made changes to the farmworker housing tax credit set-aside within the Low Income Housing Tax Credit (LIHTC) program.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, June 8, 2022.)

SUPPORT:

California Coalition for Rural Housing (Co-Sponsor)
California Rural Legal Assistance Foundation (Co-Sponsor)
Burbank Housing
Cabrillo Economic Development Corporation
California Housing Partnership Corporation
City of San Juan Bautista
Community Housing Improvement Program (CHIP)
County of Monterey
County of Riverside
Mutual Housing California
People's Self-help Housing Corporation
Public Interest Law Project
Rural Community Assistance Corporation
San Joaquin Valley Housing Collaborative
Self Help Enterprises
Sierra Business Council
Valley Restart Shelter

OPPOSITION:

None received.

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