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

Bill No: AB 447 **Hearing Date:** 7/1/2021
Author: Grayson
Version: 6/21/2021
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Income taxes: low-income housing tax credits

DIGEST: This bill makes several changes to low income housing tax credit (LIHTC) program at the Tax Credit Allocation Committee (TCAC) in the State Treasurer's Office (STO).

ANALYSIS:

Existing law:

- 1) Allows a state LIHTC for costs related to construction, rehabilitation, or acquisition of low-income housing. This credit, which mirrors the federal LIHTC, may be used by taxpayers to offset the tax under the Personal Income Tax, the Corporation Tax, and the Insurance Tax laws.
- 2) Requires the TCAC to annually allocate the California LIHTC based upon specified qualifications of the applicant and proposed project. The California LIHTC is available only to projects that receive an allocation of the federal LIHTC.
- 3) Limits the annual aggregate amount of the state LIHTC to:
 - a) \$70 million ongoing annual allocation, as adjusted for an increase in the California consumer price index, plus any unused LIHTC from the preceding calendar year and any LIHTC returned in the calendar year. The state LIHTC awarded may be claimed as a credit over a four-year period.
 - b) An additional \$500 million for the 2020 calendar year and up to \$500 million for the 2021 calendar year and every year thereafter, subject to budget appropriation.
- 4) Requires TCAC to give preference to those projects satisfying specified threshold requirements if both of the following apply:

- a) The project serves the lowest income tenants at rents affordable to those tenants, as defined.
 - b) The project is obligated to serve qualified tenants for specified periods of time.
- 5) Requires, in addition to (4) above, TCAC to use the following criteria in allocating housing credits:
- a) Projects serving large families in which a substantial number, as defined by TCAC, of all residential units are low-income units with three or more bedrooms.
 - b) Projects providing single-room occupancy units serving very low-income tenants.
 - c) Existing projects that are “at risk of conversion.”
 - d) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner’s equity constitutes at least 30 percent of the total project development costs.
- 6) Defines “at risk of conversion,” with respect to an existing property means that, among other things:
- a) a property that is both a multifamily rental housing development in which at least 50% of the units receive governmental assistance from specified federal programs and programs for loans or grants administered by the Department of Housing and Community Development (HCD).
 - b) Any restrictions on rent and income will terminate or the federally insured mortgage or rent subsidy contract on the property is eligible for repayment or termination at any time within five years before or after the date of application to TCAC.
 - c) The entity acquiring the property enters into a regulatory agreement that requires the property to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the property.
- 7) Requires, pursuant to the Preservation Notice Law, an owner of an assisted housing development to accept a bona fide offer to purchase from a qualified

purchaser, if specified requirements are met, in order to preserve the affordability of assisted housing developments.

This bill:

- 1) Updates the list of federal programs providing government assistance for projects considered “at risk of conversion” and adds the following assistance provided cities and counties in exchange for restrictions on the maximum rents and the maximum tenant income as a condition of eligibility for occupancy of the unit subject to the rent restriction:
 - a) Loans or grants provided using tax increment financing pursuant to the Community Redevelopment Law.
 - b) Local housing trust funds.
 - c) The sale or lease of public property at or below market rates.
 - d) The granting of density bonuses under state density bonus law.
- 2) Provides that “government assistance” does not include the use of tenant-based housing choice vouchers (also known as “Section 8”). Restrictions shall not include any rent control or rent stabilization ordinance imposed by a county or city.
- 3) Provides that if the development is subject to restrictions on rent and income levels, 50% of the units are also restricted to initial occupancy by lower income households, as defined.
- 4) Provides that any restrictions on rent or income levels shall exclude any affordability restrictions recorded when a preservation purchaser agrees to obligate itself to maintain the affordability of an assisted housing development for an additional 30 years or to carry out the remaining term of the federal government assistance.
- 5) Provides that projects eligible for the funds available through the budget beginning in 2020 shall include any retrofitting and repurposing of existing nonresidential structures, including but not limited to hotels and motels that were converted to residential use within the previous five years from date of application.

COMMENTS:

- 1) *Author's statement.* "AB 447 resolves three technical issues that have arisen with respect to state law governing the Low-Income Housing Tax Credit (LIHTC) Program. It adds missing programs from the Preservation Notice Law into the LIHTC statutes to facilitate the preservation of all at-risk properties by allowing TCAC to fund currently omitted at-risk properties and making these developments eligible for TCAC's at-risk set aside; it excludes an HCD or other regulatory agreement recorded in connection with interim or acquisition financing from consideration when TCAC determines a property's at-risk status; and, it defines new construction to include adaptive reuse, thereby allowing adaptive reuse developments to utilize these additional state credits."
- 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.

Each year, the federal government allocates funding to the states for LIHTC 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. In addition, the qualified low-income housing projects must comply with both rent and income restrictions.

- 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 2014, the total credit amount available for allocation was \$99.4 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.

- 4) *Projects at risk of conversion.* State law governing the LIHTC Program requires TCAC to consider within its allocation process, developments that are “at-risk of conversion.” This term is defined to mean a development in which at least 50% of the units have received governmental assistance from an enumerated list of federal and state programs and for which the affordability restrictions will expire within five years. The problem is that the LIHTC list of enumerated federal and state programs is outdated and incomplete. Among others, the list omits projects assisted with local Community Development Block Grants, HOME Investment Partnership Program funds, local funds or land donations, or Density Bonus Law. Adding the missing programs from the Preservation Notice Law into the LIHTC statutes will facilitate the preservation of all at-risk properties by allowing TCAC to fund currently omitted at-risk properties and making these developments eligible for TCAC’s at-risk set aside.
- 5) *Aligning Preservation Notice Law with TCAC.* The Preservation Notice Law gives affordable developers an exclusive opportunity to buy existing affordable housing that is eligible to convert to market rate in order to ensure that these units are preserved at affordable levels. When they purchase a property under that opportunity, HCD records a 30-year deed restriction, which arguably disqualifies the property as at-risk under the LIHTC statute. However, developers often must obtain bridge financing to quickly gain control of an at-risk property in expectation of repaying that financing and completing a rehabilitation with LIHTC. If the HCD regulatory agreement disqualifies the development as at-risk and therefore makes a LIHTC award uncertain, developers will likely be unwilling to take the risk and the property will be in danger of converting to market rate. This bill will exclude an HCD or other regulatory agreement recorded in connection with interim or acquisition financing from consideration when TCAC determines a property’s at-risk status.
- 6) *Making adaptive reuse projects eligible as new construction for state credits.* An “adaptive reuse” development involves the retrofitting and repurposing of existing non-residential buildings to create new dwelling units. Both TCAC and the Debt Limit Allocation Committee (CDLAC) consider adaptive reuse to be new construction for all portions of their programs except under the additional \$500 million in state LIHTC allocated in 2020 because the statute governing that allocation refers exclusively to the undefined term “newly constructed buildings.” This bill will explicitly define new construction to include adaptive reuse, thereby allowing adaptive reuse developments to utilize these additional state credits.

- 7) *Gutted.* This bill was gutted-and-amended on June 21st from a bill regarding the California Consumer Financial Protection Law.
- 8) *Double-referral.* This bill is also referred to the Governance and Finance Committee.

RELATED LEGISLATION:

AB 101 (Committee on Budget and Fiscal Review, Chapter 159, Statutes of 2019) — among other things allocated \$500 million for LIHTC in 2020, and up to \$500 million, upon appropriation, in 2021 and beyond.

AB 10 (Chiu, 2019) — would have increased the amount of state tax credits the California Tax Credit Allocation Committee (TCAC) can allocate for low-income housing and makes other changes to the state low-income housing tax credit (LIHTC) program. *This bill was held on the Senate Appropriations Suspense File.*

AB 1521 (Bloom, Chapter 377, Statutes of 2017) — strengthened the law regarding the preservation of assisted housing developments by requiring an owner of an assisted housing development to accept a bona fide offer to purchase from a qualified purchaser, if specified requirements are met, and by giving HCD additional enforcement authority.

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

POSITIONS: (Communicated to the committee before noon on Friday, June 25.)

SUPPORT:

California Housing Partnership Corporation (Sponsor)

OPPOSITION:

None received.

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