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

Bill No:	SJR 6	**Hearing Date:**	7/8/2021
Author:	Wiener		
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Urgency:	No	**Fiscal:**	No
Consultant:	Erin Riches		

SUBJECT: Affordable Housing Credit Improvement Act

DIGEST: This joint resolution requests that Congress enact, and that President Biden sign into law, the Affordable Housing Credit Improvement Act of 2021 (AHCIA).

ANALYSIS:

Existing law:

1) Allows a state low-income housing tax credit (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 state Tax Credit Allocation Committee (TCAC), under the State Treasurer's Office, 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 $70 million, 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.

4) Limits, pursuant to federal law, the amount of tax-exempt debt a state may issue in a calendar year for private projects that have a qualified public benefit. This cap is determined by a population-based formula. The California Debt Limit Allocation Committee (CDLAC), also under the State Treasurer's Office, sets and allocates California's annual debt ceiling and administers the state's tax-exempt bond program to issue the debt.

This joint resolution calls on Congress to enact, and the President to sign into law, the AHCIA, which will enable California to award additional tax-exempt activity bonds and to draw additional federal LIHTC.

COMMENTS:

1) *Author's statement.* "The single biggest constraint to increasing the production of affordable housing in California is the oversubscription for tax-exempt private activity bonds that provide access to unlimited 4% federal low-income housing tax credits. In large part, this oversubscription is a result of the arbitrary federal rule requiring a development to finance 50% of its costs with tax-exempt bonds in order to obtain the tax credits. By reducing this threshold to 25%, the bipartisan Affordable Housing Credit Improvement Act will bring additional federal tax credits to California and double the number of affordable rental homes California can build with these critical resources."

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 his/her annual federal tax liability in each of 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 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.

Each state receives an annual ceiling of 9% federal tax credits and they are oversubscribed by a 2:1 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, administered by CDLAC, which are capped. In 2020, the state ceiling for private activity bonds was set at $4 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 LIHTC. 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 $111 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) *Breaking the logjam.* In order to access the unlimited 4% federal LIHTC, federal law requires 50% of a development's costs to be financed with tax-exempt private activity bonds issued by CDLAC. However, the 50% threshold has not been updated since 1990, when it was lowered from 70%. Moreover, each state's allocation of tax-exempt private activity bonds is limited by federal law. As a result, California's tax-exempt bonds are oversubscribed 3-to-1, leaving hundreds of shovel-ready affordable housing developments stuck in the queue. The bipartisan AHCIA, S. 1136 and H.R. 2573, introduced by Senators Maria Cantwell (D-WA), Todd Young (R-IN), Ron Wyden (D-OR), and Rob Portman (R-OH), and Representatives Suzan DelBene (D-WA), Jackie Walorski (R-IN), Don Beyer (D-VA), and Brad Wenstrup (R-OH), will address this problem by lowering the 50% threshold to 25%. If passed, California could immediately award tax-exempt bonds to twice as many affordable housing developments and draw twice as many federal 4% credits to California to meet the state's housing needs. According to the sponsors of this resolution, the California Housing Partnership Corporation and Housing California, the AHCIA will enable the state to add 330,000 new affordable homes over the next 10 years. This resolution asks Congress to enact the AHCIA.

5) *Committee amendments*. The author will accept committee amendments to make a minor technical change and add coauthors.

RELATED LEGISLATION:

AB 447 (Grayson, 2021) — makes several changes to the state LIHTC program. *This bill will be heard in the Senate Governance and Finance Committee on July 8th.*

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

POSITIONS: (Communicated to the committee before noon on Thursday, July 1, 2021.)

SUPPORT:

California Housing Partnership (Co-Sponsor)
Housing California (Co-Sponsor)

OPPOSITION:

None received

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