
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: AB 1439 **Hearing Date:** 6/20/2023
Author: Garcia
Version: 5/1/2023
Urgency: No **Fiscal:** Yes
Consultant: Aiyana Cortez

SUBJECT: Low-income housing tax credit: farmworker housing

DIGEST: This bill requires the California Tax Credit Allocation Committee (TCAC) to consider amending the scoring system for the Low-Income Housing Tax Credit (LIHTC) by granting increased consideration for farmworker housing projects.

ANALYSIS:

Existing law:

- 1) Allocates \$70 million on an ongoing basis to TCAC for the purposes of administering the LIHTC and adjusts this amount for inflation beginning in the 2002 calendar year, plus any unused amounts for the preceding calendar year and any amount returned in the calendar year.
- 2) Allocates an augmentation of \$500 million to the LIHTC, as specified, beginning in the 2020 calendar year, and annually thereafter only if an appropriation is made in the Budget Act. Projects eligible for this augmentation must be federally subsidized. Among other provisions, TCAC is required to develop a scoring system that maximizes the efficient use of public subsidy and benefit created through private activity bonds and LIHTC programs as part of an allocation methodology that emphasizes increased production and cost containment. The factors to consider in making this determination of efficient use include, but are not limited to, the following:
 - a) The number and size of units developed including local incentives provided to increase density;
 - b) The proximity to amenities, jobs, and public transportation;
 - c) The location of the development; and,
 - d) The delivery of housing affordable to very low- and extremely low-income households by the development.

- 3) Requires for the 2024 through 2034 calendar years, the lesser of 5% of the \$500 million augmentation or \$25 million must be set aside for allocation to "farmworker housing" projects, as defined.
- 4) Requires that at least 20% of the LIHTC subject to the federal ceiling be allocated to rural areas, as defined.
- 5) Defines "farmworker housing" as housing in which at least 50% of the units are occupied by farmworkers and their households.
- 6) Requires the Department of Housing and Community Development to commission a statewide study of farmworker conditions, needs, and solutions to inform a comprehensive strategy for meeting the housing needs of the state's farmworkers by December 1, 2023 and to develop the comprehensive strategy for implementation no later than January 1, 2026.

This bill:

- 1) Requires TCAC to consider amending the regulations establishing a scoring system under the LIHTC program to award 10 points to farmworker housing projects, as defined, under the housing needs category, and an additional five points for farmworker housing under the site amenities category.
- 2) Takes immediate effect as a tax levy.

COMMENTS:

- 1) *Author's statement.* "Agriculture is a major and significant sector in California's economy. It is an industry that produced nearly \$50 billion in revenue in 2018. California farming employs 7.3% of the state's private sector labor force. Despite farmworkers' huge economic contribution to the state, their living conditions are horrific. Many farmworkers find themselves living in motel rooms or sharing a living space with several other people. The State of California needs to focus on alleviating the tragic housing conditions of farmworkers. Measures should be taken that will allow for the development of affordable farmworker housing. AB 1439 would create an incentive for the development of farmworker housing in California's rural areas, which are so desperately needed. AB 1439 would require the California Tax Credit Allocation Committee (CTCAC), for the 2024 calendar year and onward, to consider amending the regulations establishing a scoring system for the Low Income Housing Tax Credit (LIHTC) to award 10 points to farmworker housing projects under the housing needs category, and an additional five points in the category for amenities beyond those required as additional thresholds."

- 2) *A need for farmworker housing.* According to a report published in 2018 by the California Institute for Rural Studies, "Farmworker Housing Study and Action Plan for Salinas and Pajaro Valley," farmworker housing is in short supply. The study found that an additional 45,560 units were needed in the region to alleviate overcrowding in farmworker households. Additionally, 5,300 units of permanent affordable subsidized farmworker housing was needed to simply maintain the 7.6% access rate of farmworkers to subsidized housing as the preponderance of workers in the region were year-round residents. While this study focused on only one region of California's expansive agricultural communities, the study highlights the underlying need to increase the supply of affordable units to farmworker households. However, the LIHTC is a highly competitive, over-subscribed program. Though there is a huge need for farmworker housing, there is also a great need for housing for other populations.
- 3) *LIHTC.* 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 9% and 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. 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 bonds which are capped and are administered by the California Debt Limit Allocation Committee.

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. Projects that receive either state or federal tax credits are required to maintain the housing at affordable levels for 55 years. Statute authorizes \$70 million in state tax credits each year, which has been annually adjusted for inflation and now hovers around \$100 million each year.

In 2019, AB 101 (Committee on Budget), provided an additional \$500 million in state LIHTCs. When the additional \$500 million was first made available, the federal tax-exempt bond ceiling of approximately \$4 billion had not yet been reached. The additional \$500 million was coupled with tax-exempt bonds

and the 4% credit, in part, to encourage developers to fully utilize any remaining federal tax-exempt bonds that were being left on the table. After the \$500 million was made available, 4% credit applications increased significantly and the bonds became oversubscribed. As a result, CDLAC instituted a competitive process for awarding tax-exempt bonds.

- 4) *Farmworker tax credit set-aside.* In 1996, the Legislature created the Farmworker Housing Assistance Tax Credit Program and set aside \$500,000 a year from the LIHTC allocation for farmworker housing projects. If the set-aside is unused it rolls over to the next year. In an effort to streamline administration and make the farmworker program more user-friendly, SB 1247 (Lowenthal), Chapter 521, Statutes of 2008, eliminated the Farmworker Housing Assistance Tax Credit Program as a separate program and consolidated it into the state LIHTC program as a set-aside.

In 2017, AB 571 (Garcia, Chapter 372, Statutes of 2017) made several changes to the farmworker housing tax credit set-aside to make 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, it increased the amount of credits that farmworker tax credit projects can receive by allowing farmworker housing projects to qualify for a 30% boost in federal credits. In 2017, two farmworker housing projects received LIHTC awards, and in 2018, one project received credits but ultimately returned the credits. The amount currently available in the set-aside is \$4.6 million.

In 2022, AB 1654 (R. Rivas, Chapter 638, Statutes of 2022) required 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, for the next ten years. Any LIHTC that are unallocated from the farmworker housing set-aside after three years revert into the larger pool and are allocated through the LIHTC program. It is unclear whether this bill applies only under the rural set-aside.

- 5) *TCAC regulations.* TCAC and the State Treasurer's Office (STO) update the LIHTC program regulations generally every fall. This is the opportunity for stakeholders to share feedback with the Committee and recommend changes to the program. This bill requires TCAC to consider amending the regulatory process to provide 10 points under the housing needs category and an additional five points under the "amenities beyond those required" category to farmworker housing projects under the LIHTC Program scoring system. These categories provide additional consideration to projects beyond the basic thresholds required when applying for a LIHTC. Applicants must provide evidence that

the types of proposed housing and corresponding rent levels are needed and affordable to the targeted population. Beyond that basic needs demonstration, certain types of housing receive 10 points, but an applicant may only receive those 10 points for one type of housing. These types include large family projects, senior projects, and special needs projects, among others. This bill requires TCAC to consider including farmworker housing as an additional housing need category that receives greater consideration.

The LIHTC regulations also detail amenities that may be provided that would give those projects, including those amenities, additional weight in their consideration. These amenities include proximity to transit services and high-speed internet, among others. These amenities have varying requirements based on whether the project is considered a rural area project to account for the remote nature of rural projects. The maximum amount of points a project may receive for providing these types of amenities is 15. This bill intends to require TCAC to consider providing an additional five points under the site amenities category for farmworker housing.

The current bill language is ambiguous in its directive to TCAC by both requiring TCAC to “consider amending the regulations” and also stating “the regulations, as amended, shall award”. *Moving forward, the author may wish to consider addressing this discrepancy.*

RELATED LEGISLATION:

AB 346 (Quirk-Silva, 2023) — makes a variety of changes to the state LIHTC program. *This bill is also being heard at this same committee hearing.*

AB 1654 (R. Rivas, Chapter 638, Statutes of 2022) — required 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, for the next ten years.

AB 101 (Committee on Budget, Chapter 159, Statutes of 2019) — provided an additional \$500 million in state LIHTC.

AB 571 (Garcia, Chapter 372, Statutes of 2017) — made several changes to the farmworker housing tax credit set-aside to make projects more competitive.

SB 1247 (Lowenthal, Chapter 521, Statutes of 2008) — eliminated the Farmworker Housing Assistance Tax Credit Program as a separate program and consolidated it into the state LIHTC program as a set-aside.

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

POSITIONS: (Communicated to the committee before noon on Wednesday,
June 14, 2023.)

SUPPORT:

California Human Development
Center for Employment Training
Central Valley Opportunity Center (CVOC)
Coachella Valley Housing Coalition
Farmworkers Institute of Education & Leadership Development
Inland Equity Partnership
LA Cooperativa Campesina De California
Lift to Rise
Livable California
Los Amigos De LA Comunidad, Imperial Valley
Proteus, INC.

OPPOSITION:

None received.

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