

partners, caregivers, and disabled children or grandchildren, to live with a senior in a senior housing development.

- 5) Defines a “senior citizen housing development” as a residential development that is developed, substantially rehabilitated, or substantially renovated for senior citizens, that is comprised of at least 35 dwelling units and is any residential accommodation other than a mobile home.
- 6) Requires the covenants, conditions, and restrictions (CC&Rs) and other documents or written policy must set forth the limitations on occupancy, residency, or use on the basis of age. The limitation must require that the occupants of each unit must include a senior residing in the unit on a permanent basis. The limitation may allow for a caregiver or other qualified resident, as outlined in (4) above, to live in the unit with the senior.
- 7) Enacts the Teacher Housing Act of 2016, which creates a state policy supporting housing for teachers, school district employees, and other local public employees or members of the public to occupy teacher and local school employee housing. It 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.
- 8) Defines “very low-income” as persons and families whose income does not exceed 50% area median income (AMI); “low-income” as persons and families whose income does not exceed 80% AMI; and “moderate-income” as persons and families whose income does not exceed 120% of AMI.

This bill:

- 1) Authorizes, effective January 1, 2022, the establishment of an intergenerational housing development to provide intergenerational housing consisting of units for seniors, caregivers, or TAY, if all of the following conditions are satisfied:
 - a) At least 80% of the occupied dwelling units are occupied by at least one senior (55 years of age or older); specifically, at least one occupant is a senior or, if the unit is vacant, at least one of the occupants immediately prior to vacancy was a senior. This requirement shall commence when at least 25% of the units are occupied.

- b) Up to 20% of the occupied dwelling units are occupied by at least one caregiver or TAY; specifically, at least one occupant is a caregiver or TAY or, if the unit is vacant, at least one of the occupants immediately prior to vacancy was a caregiver or TAY.
 - c) The development is affordable to lower income households.
 - d) If a unit ceases to house a caregiver or TAY, the owner, board of directors, or other governing body may require the remaining occupants to vacate the unit upon receipt of six months' written notice. This shall not constitute a violation of FEHA.
 - e) The housing facility or community shall not evict or terminate the lease of a family with children in order to comply with the 80% senior requirement in (a) above.
- 2) Defines "caregiver" as an individual responsible for meeting the daily care needs of a senior; an individual hired to provide live-in, long-term, or terminal health care to a qualifying resident; or a family member of the qualifying resident providing that care.
 - 3) Defines "TAY" as an individual who is 18-24 years old and who is either of the following:
 - a) A current or former foster youth who is a ward or dependent of the juvenile court.
 - b) A homeless youth or foster youth, as specified.

COMMENTS

- 1) *Author statement.* "Our housing crisis demands creative solutions. SB 591 would increase affordable housing production and address youth homelessness by allowing developers to build affordable intergenerational housing serving seniors along with foster youth. These innovative projects address isolation and depression in seniors, while also supporting vulnerable youth as they establish their lives as independent adults."
- 2) *Discrimination protections in housing.* Federal and state law prohibit discrimination in housing accommodations; for example, a landlord cannot legally refuse to rent to a household solely because it includes children. However, both federal and state law make an exception for senior housing

developments. State law explicitly recognizes the need “to establish and preserve specially designed accessible housing for senior citizens.” State law allows a spouse, domestic partner, disabled relative, or caregiver to live with a senior in a senior-only development, and requires that at least 80% of the units in the development be occupied by a senior. (For a fuller discussion of federal law, state statute, and case law on housing discrimination, please see the Judiciary Committee analysis.)

- 3) *Low Income Housing Tax Credits.* Most affordable housing created in the state is funded in part by federal and state low income housing tax credits (LIHTC). LIHTC are used to develop housing for households that make up to 80% of the area median income. California receives an allocation of federal tax credits each year based on a per-resident formula. In 2020, the state was 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 annual statutory authorization of \$70 million. The 2019-20 and the 2020-2021 budgets authorized an additional \$500 million for state tax credits.

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 violate fair housing laws solely because of occupancy restrictions or preferences that favor tenants (a) with special needs, (b) 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 (c) who are involved in artistic or literary activities.

- 4) *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 district 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. SB 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. Last year, AB 3308 (Gabriel, Chapter 199, Statutes of 2020) expanded the Teacher Housing Act of 2016 to further permit local public employees to occupy teacher and school district employee housing.

- 5) *Intergenerational housing.* The sponsor of this bill, the City of Emeryville, states that when using LIHTCs to finance affordable senior housing, other types of affordable units cannot be included in the same building. It is therefore difficult to find financing for a project located on a city site in Emeryville, proposed as 100% affordable (30-80% AMI), for seniors and youth. The city states that the social and health benefits to seniors of living with different age groups is well documented; in addition, TAY are a vulnerable population who often lack the stability and support of a family and are at high risk of homelessness or are experiencing homelessness. The only way to finance a development for both seniors and TAY using LIHTCs, however, would be to build two separate buildings, which is physically and financially infeasible. To address this problem, this bill seeks, similar to the Teacher Housing Act, to explicitly enable intergenerational projects to qualify for federal and state LIHTCs.
- 6) *Committee amendments.* As introduced, this bill required an intergenerational housing development to, among other things, be an affordable housing development that has received an LIHTC allocation. That provision was subsequently amended to instead more broadly require the development to be affordable to lower income households, in order to cover all funding sources. **To ensure that an intergenerational housing development is eligible for LIHTCs, the author will accept technical amendments to explicitly cross reference the federal internal revenue code and specify that these developments must not violate fair housing laws.**

7) *Triple referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2021 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than two committees as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the third committee included in the original referral. This bill was also referred to the Judiciary Committee, which passed it out on a 11-0 vote on April 20, 2021.

According to the Human Services Committee:

“As currently in print, this bill enables TAY aged 18 to 24 who are a current or former foster youth, as defined, or a homeless youth or former homeless youth, as defined, to reside in specially designated units within intergenerational housing developments. With at least 80% of the housing allocated to seniors and the remaining 20% of units to be available for TAY or senior caregiver housing, the bill in print does not place requirements on these intergenerational housing developments beyond these unit allocations. Senior and TAY residents may have very different expectations regarding their housing environment and appropriate tenant behavior, thus the author may wish to consider how youth will be selected for these intergenerational developments and what efforts will be made to ensure both seniors and young people are supported so both populations succeed in this intergenerational community.

“It is well documented that additional, affordable housing opportunities are needed for California’s TAY, as TAY homelessness is an ongoing concern. There are currently multiple efforts being considered by the Legislature to address the needs of homeless youth and current or former foster youth. Although this bill would provide an additional, creative alternative housing option for qualifying youth, which has been successfully modeled by the Los Angeles LGBT Center’s Anita May Rosenstein Campus, additional considerations are needed as the bill moves through the legislative process. Specifically, the author may wish to require the inclusion of a stakeholder process to assist in the creation of a regulatory framework for these intergenerational housing developments that ensures the inclusion of child welfare and youth homeless service providers and advocates. This would provide for the regulatory process to consider the potential service and support needs of youth in these placements so that the intergenerational model is a successful one.”

RELATED LEGISLATION

AB 3308 (Gabriel, Chapter 199, Statutes of 2020) — allowed school districts to restrict occupancy of affordable housing on school district-owned land, funded with low income housing tax credits, to teachers and school district employees of the school district that owns the land. Further allowed public employees to also occupy the housing constructed under this bill.

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

POSITIONS: (Communicated to the committee before noon on Friday, April 23, 2021.)

SUPPORT:

City of Emeryville (Sponsor)
AARP
California Alliance for Retired Americans
California Apartment Association
City of Berkeley
City of Half Moon Bay
City of Oakland
Mentis
MidPen Housing Corporation
Non-profit Housing Association of Northern California
The People Concern

OPPOSITION:

None received

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