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

Bill No: AJR 3 **Hearing Date:** 7/10/2023
Author: Grayson
Version: 6/8/2023
Urgency: No **Fiscal:** No
Consultant: Alison Hughes

SUBJECT: Affordable Housing Credit Improvement Act of 2023

DIGEST: This bill declares the support of the Legislature for a reduction to the threshold for tax-exempt private activity bond (PAB) financing cap from 50 to 25% and joins the California State Treasurer in urging the passage of the federal Affordable Housing Credit Improvement Act (AHCIA) of 2023.

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 resolution calls on Congress to enact, and the President to sign into law, the AHCIA of 2023, which will enable California to award additional tax-exempt activity bonds and to draw additional federal LIHTC.

COMMENTS:

1) *Author's statement.* "California has a massive and growing housing production and affordability gap: six of the nation's most expensive large metropolitan rental markets are located here. According to the Roadmap Home 2030, California needs to build 1.2 million new affordable homes, 120,000 per year to meet the needs of low-income families over the next ten years. Yet California has never produced more than 20,000 new affordable rental homes in any year. AJR 3 urges Congress to reintroduce the Affordable Housing Credit Improvement Act of 2021 in order to reduce the bond financing threshold from 50% to 25%. In doing so, this would allow the production of badly needed housing in California and the entire nation."

2) *The federal LIHTC program.* 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 PABs 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) *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 PABs 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 PABs is limited by federal law. As a result, California's tax-exempt bonds are oversubscribed, leaving hundreds of shovel-ready affordable housing developments stuck in the queue. The AHCIA of 2023, among many other provisions, proposes to reduce the bond financing threshold requirement for 4% credit projects from 50 to 25% of initial costs. 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.

5) *If at first you don't succeed…* The Legislature adopted SJR 6 (Wiener) in 2021, which was substantially similar to this resolution.

RELATED LEGISLATION:

SJR 6 (Wiener, Resolution Chapter 130, Statutes of 2021) — requested that Congress enact, and that President Biden sign into law, the AHCIA of 2021.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, July 5, 2023.)

SUPPORT:

California State Treasurer (Sponsor)
California Housing Partnership Corporation

OPPOSITION:

None received.

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