

ASSEMBLY THIRD READING

AB 3308 (Gabriel, et al.)

As Amended May 22, 2020

Majority vote

SUMMARY:

Allows school districts to restrict occupancy of affordable housing on school district-owned land, funded with low income housing tax credits (LIHTC), to teachers and school district employees of the school district that owns the land, regardless of any laws that would prohibit a priority or preference for school district employees and teachers. Allows public employees to also occupy the housing constructed under this provision.

COMMENTS:

Low Income Housing Tax Credits (LIHTC): Most affordable housing created in the state is funded in part by federal and state LIHTC. LIHTC are used to develop housing for households that make up to 80% of the area median income (AMI). California receives an allocation of federal tax credits each year based on a per-resident formula. In 2020, the state 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 statutory authorization of \$70 million. The 2019-20 budget authorized an additional \$500 million for state tax credits and the Governor's May budget continues this allocation for the 2020-21 budget year.

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 fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (1) with special needs, (2) 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 (3) who are involved in artistic or literary activities.

Teacher Housing Act of 2016: In 2016, SB 1413 (Leno) 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 districts 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. AB 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.

Purpose of this bill: The Los Angeles Unified School District (LAUSD) applied for LIHTC to fund the construction of affordable housing on their land and planned to restrict occupancy to employees of LAUSD. However, their application was rejected under the previous leadership of the California Tax Credit Allocation Committee (TCAC) who did not agree that the statute or IRS law authorizes LIHTC to be used to fund affordable housing limited to one employer. Since that time, the leadership at TCAC has changed and the new Executive Director has provided a different interpretation of the statute and IRS law and would recommend that the Committee award LIHTC to a housing development that restricts occupancy to an individual employer.

Existing law authorizes school districts to restrict occupancy of affordable housing created using LIHTC on school district land to teachers and school district employees. The statute is ambiguous as to whether or not affordable housing constructed on school district land using tax credits can be restricted to employees of one school district. Health and Safety Code Section 53574 reads as follows:

This part specifically creates a state policy supporting housing for teachers and school district employees, as described in Section 42(g)(9) of the Internal Revenue Code, and, 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.

AB 3308 would explicitly allow a school district to limit occupancy of housing funded with LIHTC to employees of a school district on land owned by that school district.

As discussed above, federal law authorizes affordable housing funded through LIHTC to be restricted to special populations if state law supports a policy for a specified group. The state LIHTC does provide priority for affordable housing that is limited to, for example, families and individuals that are experiencing homelessness; however, these units are made broadly available to a special group, not a small subset of a special group. This bill would limit LIHTC to employees of a specific employer rather than all teachers and school district employees in the surrounding area. Although this bill would prioritize housing built with LIHTC for school employees and teachers, households would still have to qualify based on income. LIHTC are limited to households with incomes of 80% or below of the AMI.

Typically, developments that receive federal LIHTC are paired with tax-exempt private activity bonds to provide enough subsidy to finance the project. Private activity bonds must be used to finance projects that are available to the general public. Therefore, it is unclear if an affordable housing development limited to teachers and school district employees could obtain adequate financing for a development.

According to the Author:

According to the author, "We are in the midst of a serious affordable housing crisis and we should use every partner and every tool available to address it. AB 3308, will provide some much needed clarity that will ensure school districts can and will want to continue building affordable housing for teachers and school employees."

Arguments in Support:

AB 3308 will provide an important clarification in state regarding LIHTC so that school districts across the state who wish to pursue affordable housing projects for their workforce can leverage tax credits as part of a menu of available options.

Arguments in Opposition:

None on file.

FISCAL COMMENTS:

This bill is keyed non-fiscal by the Legislative Counsel.

VOTES:**ASM HOUSING AND COMMUNITY DEVELOPMENT: 8-0-0**

YES: Chiu, Diep, Gabriel, Gloria, Kiley, Limón, Maienschein, Quirk-Silva

UPDATED:

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