

---

UNFINISHED BUSINESS

---

Bill No: SB 649  
Author: Cortese (D), et al.  
Amended: 8/23/22  
Vote: 21

---

SENATE HOUSING COMMITTEE: 9-0, 4/15/21

AYES: Wiener, Bates, Caballero, Cortese, McGuire, Ochoa Bogh, Skinner,  
Umberg, Wieckowski

SENATE JUDICIARY COMMITTEE: 11-0, 5/4/21

AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird,  
Stern, Wieckowski, Wiener

SENATE FLOOR: 37-0, 5/10/21

AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Cortese,  
Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso,  
Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman,  
Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg,  
Wieckowski, Wiener, Wilk

NO VOTE RECORDED: Caballero, Limón, Stern

ASSEMBLY FLOOR: 59-15, 8/29/22 - See last page for vote

---

**SUBJECT:** Local governments: affordable housing: local tenant preference

**SOURCE:** City of San Jose  
Housing Action Coalition

---

**DIGEST:** This bill (1) creates a state policy supporting local tenant preferences for lower income households, that are subject to displacement risk, and, (2) authorizes local governments and developers in receipt of specified affordable housing funds to restrict occupancy to those at risk of displacement.

*Assembly Amendments* require a local government adopting a local tenant preference policy to post specified materials to its web site and provide the

California Department of Housing and Community Development (HCD) with a link to the site on an annual basis, and sunset the provisions of this bill on January 1, 2033.

**ANALYSIS:**

Existing law:

- 1) Creates, pursuant to the Teacher Housing Act of 2016, 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.
- 2) Enacts the Unruh Civil Rights Act, which specifically outlaws discrimination in California based on sex, race, color, religion, ancestry, national origin, age, disability, medical condition, genetic information, marital status, or sexual orientation.
- 3) Enacts the Fair Employment and Housing Act, which prohibits the existence of a restrictive covenant that makes housing opportunities unavailable based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income or ancestry.

This bill:

- 1) Provides that it is the policy of the state of California that lower income individuals residing in neighborhoods and communities experiencing significant displacement pressures and gentrification due to rapid growth or increasing housing prices need access to housing that is affordable and that assists those households in avoiding displacement.
- 2) Authorizes the low-income housing tax credit program and tax-exempt bonds for rental housing developments used to create and preserve affordable housing to be used to support access to housing that would allow households at risk of displacement to remain in the community, to the extent feasible and consistent with existing federal and state fair housing laws.

- 3) Requires a local government that adopts a tenant preference policy to do the following:
  - a) No more than 90 days after the date the ordinance becomes operation, creates a webpage on its internet web site containing its authorizing local ordinance and supporting materials
  - b) Provide a link to the web page annually to the Department of Housing and Community Development (HCD) in its annual progress report, as required by existing law.
- 4) Requires HCD to post on its website a list of jurisdictions that have a local tenant preference policy.
- 5) Imposes a January 1, 2033 sunset.

## **Background**

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.

## **Comments**

- 1) *Author's Statement.* "Tenant Preferences are a necessary tool to help stabilize neighborhoods and keep people from being uprooted from their homes,

families, and networks. Nobody deserves to be forced out of their community because they can't find stable and affordable housing, especially during a time when families are already facing extreme financial hardship due to the COVID-19 pandemic. Tenant preferences can help prioritize efficient use of scarce affordable housing resources to help mitigate problems caused by displacement in our communities. SB 649 will play a vital role in bolstering the state's efforts to protect our most vulnerable residents from displacement and addressing the homelessness crisis ravaging our cities."

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

- 3) *Displacement*. According to the Urban Displacement Project out of UC Berkeley, between 2000 and 2015, the Bay Area experienced significant and

uneven shifts in the neighborhoods where low-income residents of color lived. Some of these shifts were involuntary moves resulting from evictions, foreclosures, large rent increases, uninhabitable housing conditions, or other reasons beyond a household's control, otherwise known as "displacement." This phenomenon is not isolated to the Bay Area, however. Research has shown that involuntary moves like these, largely driven by rising housing prices, have adverse and destabilizing effects across many aspects of everyday life. Shifts in where low-income people of color live also have broader consequences for racial and economic inequality because where we live matters. Neighborhood-level factors such as poverty rates, schools, social capital, and exposure to environmental pollution have powerful and independent effects on child development, economic mobility, and health outcomes.

- 4) *Examples of enacted local tenant preference policies.* Generally, anyone who qualifies for an affordable housing program based on income guidelines has an equal chance of receiving assistance. In order to reduce the displacement of local residents, however, local governments across the country have adopted preference policies that increase the likelihood that certain applicants that meet specified criteria obtain that housing. "Tenant preference" or "community preference" policies refer to policies that prioritize affordable housing applicants with some connection to an affordable housing unit's location, and these policies have the potential to stabilize gentrifying areas and help residents vulnerable to displacement to remain in their neighborhoods. For example, these policies might give preference to a resident of the city where the housing is located, someone employed in the city, someone who has been displaced from the city under certain circumstances, or residents living in close proximity to the unit for which they are applying. This committee is aware of such policies adopted in California by the cities of San Francisco, Santa Monica, and Oakland.
- 5) *Authorizing tax credit projects for local tenants: San Jose Project.* One of the sponsors, City of San Jose, hopes to use the authorization for a local tenant preference contemplated in this bill for the establishment of a local tenant preference in San Jose and for a specific affordable housing development.

This bill contains authorization for local governments to enact a local tenant preference policy so long as the local government posts relevant details on its web site within 90 days of enacting the ordinance and notifies HCD in its annual progress report. The provisions of this bill sunset on January 1, 2033.

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

According to the Assembly Appropriations Committee:

- HCD estimates ongoing General Fund (GF) costs of \$1.1 annually for five staff positions, including one attorney position, to analyze and ensure preference requests comply with applicable fair housing requirements. HCD anticipates this bill, due to the increased popularity of preferences in housing developments, to significantly increase the number of preference requests it receives each year.

HCD further indicates it would need to contract with an external statistician at a yet-to-be-determined cost for consulting on any disparate impact fair housing analyses HCD would conduct upon receiving a request to approve a housing preference.

- The Civil Rights Department (CRD and formerly Department of Fair Employment and Housing) anticipates requesting a senior attorney at \$244,000 in FY 2023-24, and \$242,000 in FY 2024-2025 and ongoing to handle this specific workload.

CRD anticipates this bill will generate the filing of fair housing complaints with CRD that will be legally and factually complex. To investigate, mediate, and prosecute even a small number of these cases per year, CRD indicates it will require additional highly-skilled positions and resources at a likely cost of \$1 million (GF) to \$2 million (GF) annually.

**SUPPORT:** (Verified 8/29/22)

City of San Jose (co-source)

Housing Action Coalition (co-source)

Affordable Housing Network of Santa Clara County

Big City Mayors

Build Affordable Faster CA

California Housing Consortium

City of Berkeley

County of Santa Clara

East Bay Young Democrats

Greenbelt Alliance

San Francisco Bay Area Planning and Urban Research Association

Silicon Valley @ Home  
The San Francisco Foundation

**OPPOSITION:** (Verified 8/29/22)

None received

**ASSEMBLY FLOOR:** 59-15, 8/29/22

**AYES:** Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cooper, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

**NOES:** Bigelow, Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Mathis, Mayes, Nguyen, Seyarto, Smith

**NO VOTE RECORDED:** Irwin, Lackey, O'Donnell, Patterson, Valladares, Voepel

Prepared by: Alison Hughes / HOUSING / (916) 651-4124  
8/29/22 23:45:22

\*\*\*\* **END** \*\*\*\*