

ASSEMBLY THIRD READING

AB 2689 (Ávila Farías)

As Amended April 6, 2026

Majority vote

SUMMARY

Provides for the Low Income Housing Tax Credit (LIHTC) program, for any low income building that is subject to an enforceable regulatory agreement with a government entity, good cause for a nonrenewal of a lease includes when both a household's income exceeds 140% of the area median income (AMI) for at least two years and the 30% of the households monthly income exceeds the fair market rent for the county in which the unit is located.

Major Provisions

- 1) Requires a property owner to provide specified notice to a tenant whose income exceeds 140% of AMI.
- 2) Requires a property owner to provide 90 days' notice prior to the expiration of the lease term if the basis for non-renewal of a lease is that a household's income has exceeded 140% of the AMI for two consecutive years and 30% of the household's monthly income exceeds the fair market rent for the county.

COMMENTS

Affordable Housing Need: According to the California Housing Partnership, California funded upwards of 23,000 new affordable homes in 2025, yet the state is only funding 20% of what is needed to meet its goals. Renters need to earn 2.8 times the state minimum wage to afford average asking rent in California, which increased by 1.8% from last year. Seventy-nine percent of extremely low-income (ELI) renter households pay more than half of their income on housing costs compared to 6% of moderate-income renter households. The U.S Department of Housing and Urban Development considers housing to be affordable when a household spends 30% or less of its income on housing costs. For households that spend more than that, are considered "rent burdened."

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. Tax Credit Allocation Committee (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 (PABs) which are capped and are administered by the California Debt Limit Allocation Committee (CDLAC). In 1987, the Legislature authorized a state LIHTC program to augment the federal tax credit program. 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 2025, H.R.1 lowered the PAB financing threshold from 50% to 25% of land and building costs. Due to this change, affordable housing developments financed with PABs issued after Dec. 31, 2025, qualify for 4% LIHTCs with much fewer bonds than before. As a result, the PABs and 4% LIHTC will be able to stretch much further than in the past. To fully leverage this change, the state will need additional gap financing to pair with these PABS and credits. Estimates suggest that the state may be able to double our affordable housing production, from 20,000 to 40,000 units, with the additional bond cap.

Property Tax Welfare Exemption: Article XIII, Section 4(b) of the California Constitution authorizes the Legislature to exempt property used exclusively for religious, hospital, or charitable purposes, as specified, from taxation. The Legislature has implemented this "welfare exemption" in Revenue and Taxation Code (R&TC) Section 214. AB 2144 (Filante), Statutes of 1989 amended R&TC Section 214 to specifically exempt low-income housing developments operated by non-profit organizations. As noted in the Senate Revenue and Taxation Committee analysis, AB 2144's proponents argued that the property tax funds then being paid "could better be used in furtherance of the goals of providing low-income housing." Generally, to qualify for the welfare exemption, the law requires that the rental housing be financed with specified tax-exempt bonds, government loans, or grants, or that the property's owner receives LIHTC under IRC Section 42. The welfare exemption extends to "units serving lower income households." To qualify, the State Board of Equalization has noted that a unit must be occupied by a lower income household (with a maximum income of 80% AMI).

In 2017, AB 1193 (Gloria), Chapter 756, Statutes of 2017 provided that, in cases where a property owner is eligible for the LIHTC, a unit shall continue to be treated as occupied by a lower income household if the occupants was lower income on the lien date in the fiscal year in which occupancy began and the unit continues to be rent restricted, notwithstanding an increase in the income of the occupants to 140% of AMI. However, under AB 1193, if the occupants' income increases over this threshold, the unit ceases to be treated as a lower income unit. This law was designed to provide income flexibility roughly in line with federal law governing the LIHTC.

Income Qualifying: The average income of a LIHTC project is 60% of AMI. To qualify for a LIHTC unit, tenants must income-qualify when first renting the unit. There are no federal tax laws limiting how much a tenant's income can increase once they are in a LIHTC unit. In addition, a developer can receive the property tax welfare exemption on any units where the tenant's income when first occupying the unit was 80% of AMI or less. State law allows a property owner to continue to receive the welfare exemption until the tenant's income reaches 140% of AMI. Once a tenant's income exceeds 140% of AMI, a property owner can no longer receive the property tax welfare exemption. There are no financial penalties in federal tax law governing LIHTC if a tenant's income exceeds 140% of AMI.

In a LIHTC project where there is a mix of lower income units and market rate units, federal law dictates the "The Available Unit Rule" (Rule). Under the Rule, a property owner is required to maintain the level of affordability agreed to receive the LIHTC. If development is required to have 20% of the unit's deed restricted to lower income units and a tenant in a deed-restricted units income exceeds 140% of AMI, the property owner must move that person to a market rate unit when one is available and replace the lower income unit with an income qualified tenant. In developments that are 100% affordable, developers cannot move tenants because all of the units are deed restricted to lower-income and a property owner cannot raise the rent if the tenant's

income exceeds 140% of AMI because the unit is deed restricted to lower income. As a result, the property owner loses the property tax welfare exemption on that unit, subsidy that is needed to support the operation on the development because the rents are below market rent.

This bill would give a developer the option not to renew a tenant's lease if, for two years, their income exceeds 140% of AMI and they can rent a unit in the county in which they live and only pay 30% of their income toward rent. Housing costs are considered affordable if an individual pays 30% of their income toward the cost of housing. This policy would give property owners the option to fill a deed restricted lower income unit with an income qualified tenant, only if an existing tenant's income has grown to above moderate income and renting a unit in the private market allows them to continue to keep their housing costs at an affordable level. The intent of this bill is to ensure that scarce, state-subsidized units are made available to tenants who are lower-income, while ensuring that tenants whose incomes grow to more than triple the income required to initially qualify for a lower income unit are not displaced in high-cost markets. Tenants whose income grows to 140% of AMI would only have their leases not renewed if they could afford fair market rent, while paying 30% toward their rent. This ensures that tenants' housing costs remain affordable. Owners would notify tenants when their income reaches 140% of AMI so they can begin preparing for a market rate rental, including saving up for a security deposit and any other moving expenses.

According to the Author

"Millions of Californians struggle to find and afford housing. However, the demand far outweighs the supply. Waitlists for public housing or federal housing voucher units can be extensive, with families often waiting months and even years before there is an open unit. Furthermore, current law does not provide a transition for tenants in deed-restricted units who begin to earn significantly more in annual income. AB 2689 creates metrics for affordable housing managers to transition higher income tenants out of units intended for the low-income families. This bill would establish that good cause for nonrenewal of a lease where the nonrenewal relates to a household whose income exceeds 140% of the area median income for at least 2 consecutive years and 30% of the household's monthly income exceeds the fair market rent for the county where they reside. This in return would allow 100% affordable housing managers to transition higher income tenants out of units intended for the low-income families. This bill is about providing a fair, dignified process for affordable housing managers to transition units from over-income tenants to families who desperately need them."

Arguments in Support

None on file.

Arguments in Opposition

None on file.

FISCAL COMMENTS

None. This bill was keyed non-fiscal by Legislative Counsel.

VOTES

ASM HOUSING AND COMMUNITY DEVELOPMENT: 11-1-0

YES: Haney, Patterson, Ávila Farías, Caloza, Garcia, Kalra, Quirk-Silva, Ta, Tangipa, Wicks, Wilson

NO: Lee

UPDATED

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