CITIES ASSOCIATION
OF SANTA CLARA COUNTY

LEGISLATIVE ACTION COMMITTEE
AGENDA
6:30 to 6:50 pm
Thursday, April 14, 2016
West Conference Room, Sunnyvale City Hall
456 West Olive Avenue, Sunnyvale, CA

This agenda and packet are available at www.citiesassociation.org
If you are unable to attend this meeting, please pass your packet to your alternate.

1. Welcome and Introductions and Roll Call

2. Consent Calendar

A. March 10, 2016 Meeting Minutes

3. New Business

A. AB 1851 (Gray & Ting) Vehicular Air Pollution: Reduction Incentives (Seth Miller)
   1. Fact Sheet
   2. Analysis

B. SB 873 (Beall) Sale of Low Income Housing Tax Credits (Seth Miller)
   1. Fact Sheet
   2. Analysis/San Jose Memo
   3. LCC Support Letter

C. AB 2817 (Chiu) Low Income Housing Tax Credit (Seth Miller)
   1. Fact Sheet
   2. San Jose Memo/Analysis
   3. LCC Support Letter

D. AB 2502 (Mullin & Chau) - Land Use: Zoning Regulations (Betsy Shotwell)
   1. Fact Sheet
   2. San Jose Memo Analysis

E. AB 1591 (Frazier) Transportation Funding (Betsy Shotwell)
   1. Fact Sheet
   2. Transportation Bill Comparison
   3. San Jose Memo/Analysis

F. SB 1053 (Leno) Housing Opportunity Act
   1. Fact Sheet
   2. Analysis

4. Member Comments

Each Legislative Action Committee member may speak to any issue not on the agenda; time limit of 5 minutes unless LAC members authorize further discussion.

5. Oral Communications

This time is reserved for public comments, not to exceed 5 minutes, on topics that are not on the agenda.

6. Future Agenda Items

7. Adjournment

Draft Minutes
Cities Association Legislative Action Committee
Sunnyvale City Hall
March 10, 2016

The regular meeting of the Cities Association Legislative Action Committee was called to order at 6:30 p.m. with Chair Jan Pepper presiding.

1. Call to Order/Roll Call

Present:

Jason Baker, Campbell (6:37)
Rod Sinks, Cupertino
Peter Leroe-Munoz, Gilroy
Jan Pepper, Los Altos
Gary Waldeck, Los Altos Hills
Burton Craig, Monte Sereno
Rich Constantine, Morgan Hill (6:35)
Pat Showalter, Mountain View (6:38)
Greg Scharff, Palo Alto
Chappie Jones, San Jose
Mary-Lynne Bernald, Saratoga
Jim Griffith, Sunnyvale

Also Present:

Betsy Shotwell, San Jose
Raania Mohsen, CASCC
John Harpootlian, Los Altos Hills
Liz Kniss, Palo Alto
Jeff Cardenas

2. Consent Calendar

Accept Minutes of August 13, 2015 Meeting. Motion (Griffith)/ Second (Scharff). Motion carried unanimously (9:0)

Ayes: Bernald, Craig, Griffith, Jones, Leroe-Munoz, Pepper, Scharff, Sinks, Waldeck
No:
Absent: Baker, Constantine, Esteves, Marsalli, Sayoc, Showalter

3. New Business

A. **Jeffrey Cardenas presented an overview of Measure AA San Francisco Bay Restoration.**

- The San Francisco Bay is threatened due to pollution and harmful chemicals; more than 150 years of development, diking, and filling have dramatically reduced our wetlands from 200,000 acres to only 40,000 acres.
- Measure AA will restore wetlands throughout the Bay Area by:
    - Reducing trash, pollution, and harmful toxins in the Bay
    - Improving water quality
    - Restoring habitat for fish, birds, and wildlife
    - Protecting communities from flooding
    - Increasing shoreline public access.
- The measure proposes a $12 per year parcel tax measure with revenue earmarked for the restoration of wetlands surrounding the San Francisco Bay.

- The tax is designed to automatically expire in 2037; revenue from the tax would be earmarked to restoring wetlands near the San Francisco Bay.
- The tax would produce about $500 million in revenue over 20 years and would be the first parcel tax in the history of the state to be levied throughout an entire region encompassing nine counties.
- Measure AA contains provisions to ensure that funds are spent in the Bay Area responsibly and with adequate oversight.
- The San Francisco Bay Restoration Authority is a separate government entity established by the California State Legislature through 2008 AB 2954 (Lieber) and formed in 2009. It is a regional government agency charged with raising and allocating resources for the restoration, enhancement, protection, and enjoyment of wetlands and wildlife habitat in the San Francisco Bay and along its shoreline.
- Current supporters include environmental organization such as Save the Bay, The Nature Conservancy, Silicon Valley Leadership Group, Bay Area Council, and Federal, State, County and city elected officials U.S. Senator Dianne Feinstein, and Congresswoman Anna Eshoo.
- The Legislative Action Committee unanimously voted to recommend supporting Measure AA.

Motion (Sinks)/ Second (Jones). Motion carried unanimously (12:0).
Ayes: Baker, Bernald, Constantine, Craig, Griffith, Jones, Leroe-Munoz, Pepper, Scharff, Showalter, Sinks, Waldeck
No:
Absent: Esteves, Marsalli, Sayoc

3. Oral Communications – none

4. **Adjournment:** The meeting was adjourned at 6:52 p.m.

Respectfully submitted:
Raania Mohsen, Executive Director

Date of Hearing: April 11, 2016

ASSEMBLY COMMITTEE ON TRANSPORTATION
Jim Frazier, Chair
AB 1851 (Gray) – As Amended April 4, 2016

SUBJECT: Vehicular air pollution: reduction incentives

SUMMARY: Creates and expands a broad array of incentive programs to increase the sales and use of certain clean air vehicles. Specifically, **this bill**:

1) Makes findings regarding California's climate change goals and declares the intent of the Legislature to provide more realistic incentives to move customer demand for zero-emission-vehicles (ZEV) to meet the state's greenhouse gas (GHG) emission reduction goals.

2) Requires California Air Resources Board (ARB), beginning on January 1, 2017, to limit Clean Vehicle Rebate Program (CVRP) rebates to vehicles with an manufacturer's suggested retail price (MSRP) of $60,000.

3) Requires the ARB, beginning January 1, 2017, to provide CVRP rebates in the following amounts:

   a) 10% of the MSRP for qualified plug-in hybrid electric vehicles;

   b) 15% of the MSRP for qualified plug-in battery-electric vehicles; and,

   c) 25% of the MSRP for qualified fuel cell vehicles;

4) Requires ARB, beginning January 1, 2017, to increase CVRP rebates to provide the following incentive amounts for residents of a disadvantaged community:

   a) 40% of the MSRP for qualified plug-in hybrid electric vehicles;

   b) 45% of the MSRP for qualified plug-in battery-electric vehicles; and,

   c) 55% of the MSRP for qualified fuel cell vehicles.

5) Requires ARB to implement a process to allow eligible CVRP applicants to obtain prompt pre-approval prior to purchasing or leasing a qualifying vehicle and to implement a process that allows new motor vehicle dealers to be refunded any CVRP incentive amount applied to the applicant's conditional sales contract or other vehicle purchase or lease agreement in no fewer than seven days.

6) Authorizes a new car dealer to apply the CVRP incentive amount to the applicant's conditional sales contract or other vehicle purchase or lease agreement as a down payment or amount due at lease sign or delivery.

7) Requires ARB to suspend the CVRP pre-approval process if there are insufficient funds available to award CVRP incentives to provide dealers and consumers with no less than 30-days advanced notice if the pre-approval process is suspended.

8) Requires ARB to adopt regulations implementing the enhanced CVRP rebates and related provisions.

9) Requires that GGRF monies, be available upon appropriation by the Legislature, for the enhanced CVRP rebates.

10) Requires ARB to issue rebates to a property owner or lessee for the purchase and installation of up to two electric vehicle (EV) charging stations on residential properties for residents of disadvantaged communities and up to 10 EV charging stations on commercial or multifamily properties, with rebates provided as follows:

    a) $2,000 for the first year of installation;

    b) $1,500 following the first year of installation; and,

    c) $1,000 following the second year of installation.

11) Requires, to qualify for the EV charging station rebate, that the EV charging station be in service during the calendar year in which the rebate is claimed.

12) Requires that the property owner or lessee who receives rebates for the installation of an EV charging system maintain the charging station for a minimum of 60 months.

13) Requires ARB to verify that EV charging systems that are installed using the rebates remain operative for a minimum of five years. Failure to meet this requirement would result in the rebate amount being reclaimed by ARB.

14) Requires that the rebate recipient not claim a rebate for the installation of an EV charging station if an existing EV charging station has been removed from the property in the previous 12 months.

15) Provides that ARB shall limit eligible EV charging station rebates to Level 2 stations (220 volt chargers) and rapid charging ports.

16) Requires ARB to issue regulations with regard to EV charging station rebates.

17) Requires that GGRF monies be available, upon appropriation by the Legislature, for allocation for EV charging system incentives.

18) Requires, for the purposes of calculating sales and use tax (SUT) that the value of a trade-in vehicle be deducted from the sales price of a qualifying clean air vehicle and that GGRF funds be used, upon appropriation by the Legislature, to reimburse counties and cities for any revenue losses that may result.

19) Removes the cap on the green high-occupancy vehicle (HOV) lane stickers thereby allowing an unlimited number of qualifying vehicles (plug-in electric hybrid vehicles) access to HOVs with single occupants.

20) Makes related, clarifying amendments.

21) Defines a variety of terms.

EXISTING LAW:

1) Requires ARB, pursuant to AB 32 (Núñez), Chapter 488, Statutes of 2006, to develop a plan to reduce GHG emissions to 1990 levels by 2020. Under AB 32, ARB is authorized to include the use of market-based mechanisms to comply with these regulations (cap and trade).

2) Established the GGRF in the State Treasury and requires all funds collected pursuant to cap and trade, with certain limited exceptions, be deposited into the fund for appropriation by the Legislature.

3) Created the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP), pursuant to AB 118 (Núñez), Chapter 750, Statutes of 2007, and extended by AB 8 (Perea), Chapter 401, Statutes of 2013, which requires the California Energy Commission (Commission) to fund projects that develop and deploy technologies and alternative and renewable fuels in the marketplace to help meet the state's climate change goal including, but not necessarily limited to, expanding alternative fueling infrastructure such as EV charging systems.

4) Created the Air Quality Improvement Program (AQIP), administered by ARB and the Commission, in consultation with local air districts, to fund specified air quality improvement projects which includes the CVRP, administered by ARB, to promote the production and use of ZEVs.

5) Requires, pursuant to SB 535 (de León), Chapter 830, Statutes of 2013, that a minimum of 25% of the available monies in the GGRF go to projects that provide benefits to identified disadvantaged communities and that a minimum of 10% of the available monies in the fund go to projects located within identified disadvantaged communities.

6) Established the Charge Ahead California Initiative pursuant to SB 1275 (de León), Chapter 530, Statutes of 2014, that, among other things, included the goal of placing into service at least one million ZEVs and near-zero emission vehicles by January 1, 2023, and increasing access for disadvantaged, low-income, and moderate-income communities and consumers to ZEVs and near-zero-emission vehicles.

7) Authorizes a local jurisdiction to impose SUT on the sale of, storage, use, or other consumption of tangible personal property unless specifically exempted.

8) Established, pursuant to Executive Order B-16-2012, the goal of placing 1.5 million ZEVs on California's roadways by 2025.

9) Adopted, pursuant to ARB's Advanced Clean Cars Program, a variety of strategies to convert the passenger fleet to zero- and near-zero emission vehicles by advancing vehicle emission standards for vehicles which included the requirement that by 2025, ZEV sales would represent 15% of sales in 2025.

10) Allows certain qualifying ZEVs to utilize HOV lanes regardless of occupancy level to incentivize the purchase and use of these clean vehicles.

FISCAL EFFECT: Unknown

COMMENTS: With the passage of AB 32, California committed to reducing GHG emissions. Given that the transportation sector contributes nearly 40% of emissions, it makes sense why so many emissions reduction programs target the transportation sector. While AB 1851 focuses solely on the light-duty (or passenger) fleet, it is important to recognize that the light-duty vehicle sector is only one component of a much larger transportation system that includes ports, trucking, maritime, and rail industries, each of which is a significant contributor of criteria pollutants and GHG emissions. It is also important to recognize that the freight sector (which includes heavy-duty trucks, ports, highway infrastructure, and rail) has some of the greatest adverse effects on disadvantaged communities because these communities tend to border freight corridors and associated facilities such as warehouses and freight hubs.

This bill focuses on much-needed state efforts to convert the existing light-duty or passenger fleet from predominant use of higher polluting, internal combustion engine (ICE) vehicles to cleaner cars such as zero- and near-zero-emission vehicles. The author points out that recent goals and mandates related to converting the passenger fleet, set forth by the Legislature, the Governor, and ARB, have put increasing pressure on the auto industry to produce and sell these vehicles. Specifically, the author points to ARB's Advanced Clean Cars Program, which requires manufacturers to sell certain percentages of ZEVs. The author contends that while these goals are intended to create pressure and increase adoption of ZEVs, that the mechanisms currently available to dealers to get buyers to consider these vehicles are not working. He specifically points to the current suite of incentives such as CVRP and HOV access as not providing enough incentives for consumers to take action. He notes that market forces outside of a car dealer's control, such as low gas prices, also has an impact on whether or not buyers opt to purchase or lease ZEVs. To illustrate this point, he points to sales data that show in 2015 ZEVs represented 3.1% of new cars sold in California, far from the 25% goal set by the ZEV Mandate for sales in 2025.

The author introduced this bill to provide significant financial incentives to purchase certain clean air vehicles. The author points out that this method has been successfully implemented in Norway where incentives were set at nearly 50% of a qualifying vehicles' price. He notes that these programs have substantially increased sales and improved market penetration. It should also be noted, however, that along with substantial incentives, countries like Norway have also created substantial "disincentives" for purchasing conventional vehicles including increased taxes on these vehicles. This, along with the relatively high cost of fuel and shorter driving distances create circumstances that are substantially different from those in California.

The contention that substantially increasing rebates will automatically spur consumer purchases is likely correct given that rebates would be increased by several orders of magnitude over the current program. For example, individuals purchasing a Chevy Volt currently receive a $1,500 rebate. Under this bill, the consumer would receive a $3,300 or $13,000 for disadvantaged community residents. For battery electric vehicles (such as a Nissan LEAF) for which current rebates are set at $2,500, this bill would provide rebates of $4,350 or $13,050 for disadvantaged community residents. For fuel cell vehicles, where rebates are currently set $5,000, increased rebates pursuant to AB 1851 would be $14,375 or $31,625 for disadvantaged community residents). The important question is whether or not these purchasing habits will be sustained after the program ends. In the state of Georgia, when successful incentive programs were eliminated, electric car sales in the state plummeted by 90%, leaving it open to question whether

incentives actually create a lasting effect on buyer behavior or if the incentives only temporarily affect buyer choice insomuch as decision making is influenced solely by the rebate. Overall, the California New Car Dealers Association (CNCDA) estimates that annual expenditures for this program would be in the vicinity of $750 million to $2 billion annually

Vehicle charging incentives: There is little question that EV owners need to have the confidence that they will be able to locate and use EV charging stations so that they can confidently operate their vehicles. Without this assurance, many will simply choose not to purchase EVs. To address these concerns, the author included provisions in this bill that would provide additional incentives for the installation of EV charging stations in single family homes, multi-unit dwellings, and commercial buildings. Specifically, this bill would authorize up to $4,500 in incentive funding, paid over a period of several years, for individuals in disadvantaged communities who wish to install up to two (Level 2 or fast) charging systems. For commercial developments and multi-unit dwelling, individuals would be authorized to receive a $4,500 rebate (per charging system) for the installation of up to ten (Level 2 or fast) EV charging systems. The funding for these rebates would come from the GGRF, upon appropriation by the Legislature. To ensure that the systems are installed and utilized as intended, this bill would require that ARB ensure that the EV charging systems are installed maintained for at least 5 years and, if they are not, ARB would be required to seek reimbursement of the incentive amount from the incentive program recipient.

While the availability of EV charging systems can be an impediment to EV adoption, it is unclear whether incentive programs for the installation of home, commercial, and multi-unit dwelling charging systems are needed. For example, studies show that most EV owners use a standard, 110 outlet to charge their vehicles at home overnight. Given that the program only qualifies individuals for Level 2 or fast charging systems, many may not feel compelled to utilize the incentive funding.

Multi-unit dwellings and commercial buildings present a unique set of challenging circumstances with respect to EV charging system installation. For example, retrofitting a building to accommodate increased loads on the electrical system as can be very costly. Additionally, unless these systems include a payment collection system, many landlords or commercial property owners may pass on installing EV charging systems to avoid these increased costs.

Manufacturer's suggested retail price cap: In an effort to limit rebate amounts, the author has included an MSRP "cap" of $60,000 which would effectively limit buyers who wish to use incentives to vehicles with an MSRP of $60,000 or less. On one hand, it is wise to institute a cap as a mechanism to limit annual program expenditures; however, instituting an MSRP cap would exclude a number of vehicles that would otherwise qualifying (namely Tesla and some Cadillac models). With substantial incentive amounts at stake, it is likely that buyers would steer away from purchases of these higher-priced vehicles. While it could be argued that this could further encourage auto manufactures to lower their price point, it could also be argued that this could harm California-based companies and the dealers that sell these high-priced vehicles.

It is important to note that a similar MSRP cap was suggested by ARB in 2014 as part of proposed CVRP program revisions to address growing concerns incentives were mostly being used by the affluent to purchase expensive vehicles. After receiving numerous complaints about the potential adverse impacts of the cap on the CVRP program and California's economy, as well as concerns as about how the proposal could stifle competition and innovation, ARB ultimately

opted not to implement the MSRP cap in the CVRP. While this same argument could be made for the MSRP cap in AB 1851, because incentive amounts are based on a qualifying vehicle's MSRP, eliminating the MSRP cap in this bill would serve to further increase incentive amounts for vehicles and undoubtedly place an increased burden on the GGRF.

Sales tax exemption: The author proposes to increase incentives for the purchase of certain ZEVs by providing that, for the purposes of calculating SUT, that the value of a trade-in vehicle be deducted from the sales price of a qualifying ZEV. This bill addresses potential loss of revenue to local jurisdictions by requiring that they be reimbursed using GGRF revenues. While it is true that ZEVs are comparatively more costly than traditional vehicles, resulting in an increased tax burden on the consumer, these vehicles also provide substantial cost savings to buyers in terms of lower maintenance costs and reduced fueling costs. It is likely these savings, especially over time, would far outweigh the amount that would be offset by the SUT exemption. Additionally, while lowering the tax burden on the buyer would provide a benefit, the pass-through costs to the GGRF could prove substantial.

HOV sticker program incentives: Under current law, green HOV access stickers are available for 85,000 plug-in hybrid electric vehicles that meet certain requirements. To date, the 85,000 has been met meaning that no new green stickers can be issued. The white sticker program, which provides HOV access to battery-electric and fuel cell vehicles, does not have a cap on the number of stickers that can be issued. The green stickers, as well as the white stickers, provide plug-in electric hybrid vehicles with access to HOV lanes and freeway ramps, regardless of occupancy level, until 2019.

To further incentivize the purchase of ZEVs the author has included a provision that would lift the cap on green HOV sticker program, thereby providing that an unlimited number of vehicles that qualify for the green sticker program can access HOV lanes. While it is true that HOV access provides a low-overhead and popular method by which to incentivize the purchase of HOVs, providing an unlimited number of qualifying vehicles access to HOV lanes could result in increased HOV lane congestion thereby decreasing their utility for ZEV owners and carpoolers alike. It is also important to point out that this bill conflicts with AB 1964 (Bloom), that recently passed out of this committee in that AB 1964 provides plug-in hybrid electric vehicles access to HOV lanes for only a three year period upon execution of the existing program in 2019.

Writing in support, CNCDA writes that in 2015, California's new car dealers sold more than two million new vehicles but of this number, only 3.1% were ZEV and plug-in hybrid vehicles. CNCDA states unequivocally that drastic measures need to be taken immediately to improve ZEV adoption rates if the states goals and mandates are to be achieved. CDNA notes that while existing incentive programs have been successful, they clearly are not creating enough of an incentive to get buyers to purchase these cars. CNCDA feels strongly that substantially increased subsidies, such as those provided in countries like Norway, are needed to get buyers' attention.

Committee concerns: If the state wishes to meet its clean air and climate goals, it must definitely help complete the transformation of the passenger fleet from traditional petroleum fuel vehicles to zero- and near-zero-emission vehicles. Yet despite spending millions of dollars, lagging sales of ZEVs leaves one wondering if the efforts have been for not or if additional effort, and expense, should be imparted. This is a complex question with even more complex answers and it

is unclear if incentives alone, no matter how much money is spent, will encourage buyers to adopt ZEVs, particularly when gas prices are low and the cost of conventional vehicles is competitive or lower than ZEVs.

Therefore, this bill stands on the premise that increasing incentives (to up to half the value of a vehicle) is what is needed to convert the fleet, but given the cost of nearly $2 billion annually, it is important to evaluate whether or not other projects, in the transportation sector or otherwise, would achieve more gains with similar, or fewer, expenditures of increasingly popular GGRF revenues.

This bill along with AB 1710 (Calderon) would make changes to the CVRP and other programs to provide additional incentive funding to encourage ZEV adoption. While this bill is more prescriptive in that it outlines specific program parameters, AB 1710 aims to achieve similar outcomes by directing ARB to develop a the program based specified parameters. In addition, this bill, along with many others would, draw heavily on GGRF revenues, much of which is already subject to continuous appropriation by the Legislature.

Suggested amendments: This bill does not currently provide an "exit strategy" whereby incentive funding could be discontinued should the program prove too costly or be unsuccessful, nor is it clear whether this program would supplant existing CVRP rebates or add to them. Further, as written, AB 1851 would provide substantially higher rebates for persons who live in a disadvantaged community, without regard to the individual's income and could potentially incentivize manufactures to keep vehicle prices high.

To address these concerns, the author has agreed to take amendments in the Assembly Transportation Committee that would:

1) Limit incentives to the first $60,000 of a vehicle's MSRP or the final sales price of the vehicle, whichever is lower;

2) Include a provision to sunset the program on January 1, 2026;

3) Include a provision clarifying that only low- and moderate-income individuals in disadvantaged communities would qualify for the enhanced rebates; and,

4) Clarifies that the incentives provided in this bill would replace, not be added to, existing incentives provided pursuant to CVRP.

Double referral: This bill will be referred to the Assembly Natural Resources Committee should it pass out of this committee.

Related legislation: AB 1964 (Bloom), creates a new program (upon expiration of the existing program) to allow plug-in hybrid electric vehicles access to HOV lanes for a three-year period, regardless of vehicle occupancy level. AB 1964 passed out of this committee on April 4, 2016, with a 14 to 2 vote and is currently awaiting a hearing in the Assembly Appropriations Committee.

AB 1710 (Calderon), requires ARB, in coordination with the Commission, on or before January 1, 2019, to develop and implement a comprehensive program to promote advanced-technology

light-duty vehicle deployment in the state to drastically increase the use of ZEVs to meet the state's emissions reduction goals. AB 1710 is scheduled to be heard by this committee on April 11, 2016.

AB 1965 (Cooper), requires ARB to expand the Enhanced Fleet Modernization Plus Up Program in disadvantaged communities and in areas with poor air quality to increase retirement of high polluting vehicles and replace them with cleaner cars. AB 1965 is scheduled to be heard by this committee on April 11, 2016.

Previous legislation: SB 1275 (de León), Chapter 530, Statutes of 2014, established the Charge Ahead California Initiative that, among other things, set the goal of placing one million zero- and near-zero-emission vehicles into service on California's roadways by January 1, 2023, and increasing access to these vehicles for disadvantaged, low-, and moderate-income communities and consumers.

AB 8 (Perea), Chapter 401, Statutes of 2013, extended until January 1, 2024, extra fees on vehicle registrations, boat registrations, and tire sales in order to fund the programs that support the production, distribution, and sale of alternative fuels and vehicle technologies, as well as air emissions reduction efforts.

SB 535 (de León), Chapter 830, Statutes of 2013, required that a minimum of 25% of the available moneys in the GGRF go to projects that provide benefits to identified disadvantaged communities and that a minimum of 10% of the available moneys in the fund to projects located within identified disadvantaged communities.

AB 945 (Ting) of 2015, would have provided a partial SUT exemption for the purchase and use of a qualified vehicle. AB 945 was held on the Assembly Appropriations Committee suspense file.

AB 1077 (Ting and Muratsuchi), of the 2013-14 Legislative Session, provided a partial SUT exemption for QMV, as specified, and reduced the amount of vehicle license fee imposed on an owner of a QMV. AB 1077 was held on the Assembly Appropriation Committee suspense file.

AB 118 (Núñez), Chapter 750, Statutes of 2007, created the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 that required the Commission to implement the ARFVTP and provide funding measures to specified entities to develop and deploy technologies and alternative and renewable fuels in the marketplace to help attain the state’s climate change policies.

AB 32 (Núñez), Chapter 488, Statutes of 2006, required the ARB to develop a plan of how to reduce emissions to 1990 levels by the year 2020 and also required ARB to ensure that, to the extent feasible, GHGs reduction requirement and programs direct public and private investment toward the most disadvantaged communities.

AB 1007 (Pavley), Chapter 371, Statutes of 2005, required ARB and the Commission to develop a plan to increase alternative fuels use in California.

REGISTERED SUPPORT / OPPOSITION:

Support

Alliance of Automobile Manufacturers
California New Car Dealers Association

Opposition

California Taxpayers Association

Analysis Prepared by: Victoria Alvarez / TRANS. / (916) 319-2093

SB 873 (Beall)
Allowing the Sale of State Low Income Housing Tax Credits
Fact Sheet

ISSUE

This bill seeks to increase the impact of the state's existing low-income housing tax credit with no fiscal impact to the state by structuring the credits in a way that is not subject to federal taxation.

BACKGROUND

Congress enacted the federal Low Income Housing Tax Credit (LIHTC) program in 1986 to provide the private market with an incentive to invest in affordable housing. The Legislature directed the California Tax Credit Allocation Committee (CTCAC) to award LIHTCs to developers of qualified projects in the state. The developers, who do not have sufficient tax liability to use the credits themselves, in turn seek equity investment for the project from corporations and others with tax liabilities in exchange for the tax credits. Under current law, the investors must become owners of the property to claim the credits. The equity the investors provide typically reduces the debt that the developer would otherwise have to borrow, allowing owners to offer lower, more affordable rents.

In response to the high cost of developing housing in California, the Legislature in 1987 authorized a state low-income housing tax credit program to leverage the federal credit program. Unfortunately, state taxes are deductible from federal taxes, meaning that investors claiming the state LIHTC must then pay taxes on their higher federal income. With the federal corporate tax rate at 35%, this means that investors claiming state LIHTC's generally pay no more than 65 cents for each dollar. In other words, for every dollar the state invests in this critical program, the federal government currently takes 35 cents.

THIS BILL

SB 873 substantially increases the value of the state's investment in the LIHTC program by allowing a developer who receives an award of state LIHTCs to sell the credits to an investor without requiring the investor to be part of the ownership entity (typically a limited partnership). Effectively, the bill allows the developer to convert the state LIHTC, which is currently taxed by the federal government as income to the investor/owner, into an asset subject only to capital gains taxation. Because the capital gain is minimal in this context, investors will pay significantly closer to one dollar for each dollar of credit. While the proceeds from the sale of the state LIHTCs sold in this manner would still be income to the developer, a non-profit developer is exempt from income taxation and could therefor sell the state LIHTCs to an investor without the loss of value that currently occurs in the sale of state credits.

SB 873 will significantly increase the value of state LIHTCs and therefore the public benefit because it will largely eliminate the federal tax impacts associated with investors claiming state credits. The bill greatly increases the efficiency of the program and allows many more affordable housing units to be built for the same level of state tax expenditure. In other words, this bill gives the state a bigger bang for its buck.

STATUS/VOTES

Introduced January 14, 2016

SUPPORT

California State Treasurer John Chiang (Co-Sponsor)
California Housing Partnership Corporation (Co-Sponsor)

OPPOSITION

None received.

FOR MORE INFORMATION

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SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Robert M. Hertzberg, Chair
2015 - 2016 Regular

Bill No:	SB 873	**Hearing Date:**	3/30/16
Author:	Beall	**Tax Levy:**	Yes
Version:	1/14/16	**Fiscal:**	Yes
Consultant:	Grinnell		

INCOME TAXES: INSURANCE TAXES: CREDITS: LOW-INCOME HOUSING: SALE OF CREDIT

Allows taxpayers to sell low-income housing tax credits; reenacts authority for partnership agreements to allocate state tax credits differently than federal ones.

Background

Current federal law allows tax credits against federal taxes for investors who provide project capital to low-income housing projects. Taxpayers claim Low-Income Housing Tax Credits (LIHTCs) equal to either 9% or 4% of the project's basis over 10 years, and start claiming the credit in the taxable year in which the project is placed in service. State law also allows credits against the Personal Income Tax, Corporation Tax, and Gross Premiums Tax for the same projects. The credits are only available for rental housing projects which remain affordable to residents for 55 years, enforced by regulatory agreements recorded against each project.

The California Tax Credit Allocation Committee (CTCAC), comprised of the State Treasurer, the State Controller, the Director of Finance, and three non-voting members, allocates both federal and state credits. CTCAC awards a federal credit based on a formula in federal law, currently $2.25 per capita for each state, and a state credit up to a statutory cap annually adjusted for inflation, plus any unallocated credits from previous years. Housing developers design projects and apply to CTCAC for credits, who then review the application, and either denies it or grants credits. The housing developer then forms partnership agreements with taxpayers that provide project capital for the low-income housing project in exchange for the credits at a discount. Tax credits generally total 100% of a project's eligible basis, or its cost less non-depreciable items. CTCAC may allocate federal tax credit to any area of the state, but must conduct a feasibility analysis to ensure that the amount of credit granted doesn't exceed the amount of capital needed to build the project.

From 2009 to 2016, state law allowed LIHTC partnership agreements to allocate the state LIHTC to investors in a manner that differs from the proportional division of the federal credit (SB 585, Lowenthal, 2008), a unique departure from federal partnership rules to which California conforms. These rules generally require that any allocation from the partnership to any of its members, such as income, losses, or tax credits, must have "substantial economic effect," meaning that the partnership's tax benefits must be proportionally allocated to each partner according to his or her contribution to or interests in the partnership relative to its other members.

Generally, California doesn't allow taxpayers to sell state tax credits; however, taxpayers with motion picture production credits from independent films can sell the credit to unrelated investors, which can be a key financing tool for filmmakers to raise capital to produce a motion picture. Additionally, corporation taxpayers can share credits within their unitary group (AB 1452, Committee on Budget, 2008). Seeking additional financing options, the State Treasurer wants to allow low-income housing developers to sell tax credits, and reenact the authority for projects to allocate state tax credits differently than federal ones.

Proposed Law

Senate Bill 873 amends the LIHTC for each tax to allow a taxpayer to make an irrevocable election to sell all or any portion of LIHTC to another taxpayer as part of its application to CTCAC, subject to several requirements, including:

- The taxpayer buying the credit is also allowed the federal or state credit in connection with a project in California in the same or a previous taxable year as the credit they purchase, which restricts the pool of potential buyers only to those who currently or in the past provided project capital for other LIHTC projects in the state.
- The taxpayer selling the credit must receive consideration that is not less than 80% of the credit's value; however, the director of CTCAC may revoke the election if the consideration amount falls below that level after CTCAC makes the credit reservation.
- The taxpayer selling the credit must report specified information to CTCAC within ten days of the sale.
- The taxpayer selling the credit remains solely liable to comply with statutes authorizing the LIHTC; the bill explicitly exempts taxpayers purchasing the credits from these requirements, but allows them to use the credit in the same manner as the taxpayer who sold it.
- The taxpayer cannot sell the credit if he or she claims it on any return.
- CTCAC issues the taxpayer a preliminary reservation on or after January 1, 2016.

Taxpayers purchasing the credit can use the credit in the same way the taxpayer originally receiving it can, and can sell to more than one other party. Taxpayers who originally purchase credits can resell them once, but after that, credits cannot be subsequently resold. CTCAC must also provide an annual listing to the Franchise Tax Board (FTB) of taxpayers selling and purchasing credits. CTCAC may also prescribe rules, guidelines, or procedures necessary to carry out the bill, which are exempt from the Administrative Procedures Act.

The measure also reenacts without a sunset provision the taxpayer's ability to make allocations of LIHTCs within the partnership agreement without economic substance thereby allowing state tax credits to be allocated differently than federal ones.

The bill also makes several technical, grammatical, and conforming changes.

State Revenue Impact

FTB estimates revenue gains of $300,000 in 2016-17, and revenue losses of $100,000 in 2017-18, $700,000 in 2018-19, which gradually increases to $2 million by 2021.

Comments

1. Purpose of the bill. According to the author, "SB 873 seeks to increase the impact of the state's existing low-income housing tax credit (LIHTC) with no fiscal impact to the state by structuring the credits in a way that is not subject to federal taxation. LIHTCs are awarded to developers of qualified projects and are the primary source of capital to construct and rehabilitate thousands of affordable housing units each year. Non-profit affordable housing developers, who do not have the required tax liability on their own, must seek out private equity investments for their developments. Under current law, investors must become owners of the property to claim the credits against their state tax liabilities. Due to the fact that state taxes are deductible from federal taxes, a reduction in the state tax liability increases the federal tax liability for the investor. With the federal corporate tax rate at 35%, investors will generally invest no more than 65 cents for each dollar of state credit. SB 873 addresses this issue by allowing a developer who is awarded state credits to sell the credits to an investor without admitting the investor to the ownership partnership and thereby increasing the value of the credit, closer to one dollar for each dollar of credit, to the investor. SB 873 will significantly increase the value of state LIHTCs and therefore the public benefit because it will largely eliminate the federal tax impacts associated with investors claiming state credits. It will also greatly increase the efficiency of the program and allow many more affordable housing units to be built for the same level of state tax expenditure. In other words, this bill gives the state a bigger bang for its buck."

2. A different kind of credit. The LIHTC induces investment in low-income housing by providing a tax shelter for investors allocating capital to an asset class with a relatively poor rate of return. In return for providing the tax shelter, the state gets more low-income housing than it otherwise would have. Low-income housing projects face many barriers in California: high costs of land, labor, and capital; resistance from local residents and state and local laws and policies protecting the environment, among others. Because the credit is capped and allocated, CTCAC awards tax credits to projects on a competitive process based on its evaluation of the most effective use of the tax credits, which contrasts with other state tax credits, where any individual or businesses can qualify for a credit by virtue of incurring specific costs such as research and development. Currently, housing sponsors form partnership agreements with investors, who provide capital to construct the housing project in exchange for the tax credits and an ownership stake in the project. The tax credits can exceed the value of the investment because tax credit demand exceeds supply. For example, a partnership agreement may allocate 100% of tax credits to an investor that provides 75% of the necessary project funding; the value of the discounted tax credits is sufficient for investors to participate. Investors claim the credit until exhausted, and then walk away from the partnership, deducting the amount paid to the partnership in exchange for the tax credits as a capital loss.

3. Gimme shelter. With the exception of the motion picture production credit, California generally doesn't allow sales of tax credits, as sales allow high-income taxpayers to buy down their tax obligations, often at a discount. A taxpayer with available capital can buy an LIHTC to shelter income from other sources from tax, whereas less sophisticated taxpayers cannot. However, Congress and the Legislature designed LIHTCs in this specific way because of the difficulty these socially beneficial projects experience attracting available capital.

4. Taxing. The IRS Chief Counsel Advised in 2011 that the proceeds of sales of tax credits results in taxable income for federal purposes, as nothing in federal law explicitly exempts these sales from the Internal Revenue Code's definition of income. California also conforms to this definition, which would normally trigger a significant combined liability for taxpayers selling tax

credits under SB 873. However, because many low-income housing developers are non-profit, tax-exempt entities, they can sell tax credits without a tax implication.

5. Permanence. In addition to allowing sales of LIHTCs, SB 873 resurrects the currently expired ability of partnership agreements to allocate state credits differently than federal credits, which is generally precluded by federal and state law guiding partnerships. CTCAC reports that several projects have allocated capital using this authority, which adds much more flexibility for insurance companies and banks to invest in low-income housing. CTCAC also reports that this ability has drawn additional investors and capital into the state, and allowing this provision to remain expired would result in a reduction in demand, and thereby a loss of available capital.

6. Do it again. SB 873 is almost identical to the last version of SB 377 (Beall, 2015), which the Committee approved unanimously last year. That measure was amended in the Assembly Revenue and Taxation Committee to restrict the pool of potential buyers to those taxpayers who currently or in the past claimed state or federal EITCs, among other changes. However, Governor Brown vetoed the bill, using the same veto message that he issued for several other bills, stating:

> "Despite strong revenue performance over the past few years, the state's budget has remained precariously balanced due to unexpected costs and the provision of new services. Now, without the extension of the managed care organization tax that I called for in special session, next year's budget faces the prospect of over $1 billion in cuts. Given these financial uncertainties, I cannot support providing additional tax credits that will make balancing the state's budget even more difficult. Tax credits, like new spending on programs, need to be considered comprehensively as part of the budget deliberations."

7. Technicals. FTB and Committee Staff recommend the following grammatical amendments:

- On page 3, line 2, after "subject" insert "to"
- On page 13, line 32, after "party" insert "or parties"
- On page 27, line 3, after "party" insert "or parties"

Support and Opposition (3/24/16)

Support: State Treasurer John Chiang, Association of Regional Center Agencies, California Housing Partnership Corporation, The Arc and United Cerebral Palsy California Collaboration, Santa Clara County Board of Supervisors.

Opposition: Unknown.

-- END --

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

RULES COMMITTEE: 3-16-16
ITEM: G.4

CITY COUNCIL ACTION REQUEST			
Department(s): Housing	**Date:** 3/9/16	**Coordination:** City Attorney's Office City Manager's Office	**Dept. Approval:** /s/ Jacky Morales-Ferrand **CMO Approval:**

SUBJECT: SB 873 (Beall) Sale of State Low Income Housing Tax Credits

RECOMMENDED POSITION: Support

RECOMMENDED ACTION:

1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, support SB 873 (Beall).
2. Recommend a one-week turnaround so that the City's Legislative Advocate in Sacramento can indicate a support position for SB 873 (Beall).

BILL SYNOPSIS:

SB 873 is a reintroduction of SB 377 in 2015, which was supported by the City and passed both houses of the Legislature before being vetoed by the Governor. This bill was one of nine spending bills vetoed by the Governor because the Legislature failed to pass the Managed Care Tax. The Managed Care Tax has been passed by both Houses and Governor Brown's signature is expected.

SB 873 allows a housing developer that has been awarded State low-income housing tax credits (LIHTC) for affordable housing to sell those credits to equity investors without requiring them to become part of the ownership structure. The current State LIHTC program requirement that investors be part of that structure leads to a federal tax liability for tax credit equity investors. Assuming a federal corporate tax rate of 35%, investors will generally pay a maximum of 65 cents for each dollar of State credit, which is what the State is currently seeing on its credit sales. The lower the net price for credits, the higher the development's funding gap. Other public lenders, such as the City of San José, must make up the gap between the total amount of private equity plus private bank loans, and the total sources needed to build and operate the development; therefore, increasing the amount of State LIHTC equity available to such developments lowers, or could eliminate, the need for additional public subsidies. Further, as credits are sold for a net price, these changes would not result in additional fiscal impacts to the State. Other states allow tax credits to be administered, or "certificated," in this way. Thus, eliminating this ownership structure requirement incentivizes investors to pay more for each dollar of State tax credit with no additional cost to the State.

Additionally, this bill would require State tax credits to be sold to investors for no less than 80 cents for each dollar of State credit, setting a floor for credit pricing. Both the structure and the pricing floor would expand the amount of private equity that could be generated through the State tax credit program. If the new value of the State credit to the investor results in an investment closer to a dollar-for-dollar investment to credit match, the value of the program could increase by 35-50%, according to industry consultants who helped to craft the proposal.

IMPACTS TO CITY OF SAN JOSE:

If approved, the changes made by SB 873 would significantly increase the amount of private funding available to develop affordable apartments without additional cost to the State. There are thousands of people on waiting lists for restricted affordable apartments in San José, and many thousands more that are income-eligible but cannot get onto closed apartment waitlists. By enhancing the State tax credit program to work more efficiently, our region could increase the number of affordable apartments produced by an estimated 50-200 homes per year.

A more efficient State tax credit program that maximizes private investments will also enable the City to use its scarce resources to produce more, or more deeply-affordable, apartments. As many commercial lenders operating in the San José market are subject to the Community Reinvestment Act, there is strong demand by equity investors—many of which are commercial banks—for tax credits in San José. Therefore, a ready supply of new private capital would be available to many more affordable housing developments, thereby lessening—or possibly eliminating—the need for additional "gap loans" from the City. This lessening of demand for City funding would support the City's flexibility to more strategically use its own investment funds to produce housing types that better meet the needs of the local community. With the loss of nearly $40 million dollars annually as a result of the dissolution of California's Redevelopment Agencies, the City should actively support all opportunities to increase the leveraging of its scarce housing investment dollars. Wise use of our limited resources is critical to our ability to continue developing affordable housing for individuals and families living in San José.

To further expand housing opportunities for those in our community who are homeless and struggling with high barriers to housing, such as mental health and substance abuse issues, the Housing Department is actively pursuing the development of 100% supportive housing developments. Supportive housing is a national best practice in housing chronically homeless and high-needs individuals. Financing these deeply-affordable housing developments is quite difficult without the annual revenue generated by the Redevelopment Agency. If SB 873 is passed and signed by the Governor, State tax credits will increase in value, thereby lessening the demand for gap financing from the City.

POLICY ALIGNMENT:

This bill aligns with the Council-approved *2016 Legislative Guiding Principles and Priorities* to "ensure that state and federal housing and community development related tax programs, policies, and proposals maximize and protect the benefits to San José."

SUPPORTERS/OPPONENTS:

Support: The bill is co-sponsored by: the Non-Profit Housing Association of Northern California, Western Center on Law and Poverty and the California Rural Legal Assistance Foundation.

Opposed: The bill has no registered opposition at this time.

STATUS OF BILL:

The bill was introduced on January 14 and has been referred to the Senate Government and Finance Committee. If passed by the Committee, the bill, a fiscal bill, will then go before the Senate Appropriations Committee before a full vote of the Senate. Bills must pass out of their House of origin by June 3, which then goes to the second House for consideration. August 31 is the last day for bills to pass out of both Houses.

FOR QUESTIONS CONTACT: Jacky Morales-Ferrand, 408-535-3851

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March 30, 2016

The Honorable Jim Beall
State Capitol, Room 5066
Sacramento, CA 95814

RE: SB 873 (Beall) Tax Credits: Low-Income Housing: Sale of Credit
NOTICE OF SUPPORT *(As introduced)*

Dear Senator Beall:

The League of California Cities is pleased to support your SB 873 (Beall), which would increase the benefits for private investors who choose to invest in affordable housing. This will ultimately increase the number of affordable housing units in the state.

Under current law, private equity investors must become owners of a property to claim tax credits against their state tax liabilities. However, a decrease in an investors' state tax liability triggers an increase in their federal tax liability. SB 873 addresses this issue by allowing an affordable housing developer to sell the credits to an investor without admitting them to an ownership partnership.

The League has longstanding policy supporting additional state funding for affordable housing. The challenges of funding affordable housing development, however, have increased significantly with the loss of over $1 billion per year of redevelopment housing funds. While there continues to be a need for a permanent public funding source, SB 873 provides a tool to incentivize private investments in affordable housing.

For these reasons, the League of California Cities supports this legislation. If you have any questions regarding the League's position on this bill, please call me at (916) 658-8222 or Kendra Harris, Legislative Representative at (916) 658-8250.

Sincerely,

Dan Carrigg
Senior Director, Legislative Affairs

cc: Chair and Members, Senate Governance and Finance Committee
Colin Grinnell, Staff Director, Senate Governance and Finance
Doug Yoakam, Housing Consultant, Senate Republican Caucus

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

RULES COMMITTEE: 3-16-16
ITEM: G.3

CITY COUNCIL ACTION REQUEST			
Department(s): Housing	**Date:** 3/9/16	**Coordination:** City Attorney's Office City Manager's Office	**Dept. Approval:** /s/ Jacky Morales-Ferrand **CMO Approval:** D. DSy

SUBJECT: AB 2817 (Chiu) Low Income Housing Tax Credit

RECOMMENDED POSITION: Support

RECOMMENDED ACTION:

1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, support AB 2817 (Chiu) – Low Income Housing Tax Credit.
2. Recommend a one-week turnaround so that the City's Legislative Advocate in Sacramento can indicate a support position for AB 2817 (Chiu).

BILL SYNOPSIS:

The low-income housing tax credit (LIHTC, or 'tax credit') program is a key tool for the production of restricted affordable apartments in California and throughout the Country. In California, to fund a portion of affordable developments, developers utilize either 4% or 9% Federal tax credits awarded through the State Treasurer's Office. The State of California also provides State tax credits (currently capped at $100 million annually) to supplement the federal program. Federal tax credits are awarded to qualified developers and are sold to private investors, who use the credits over a 10-year period to reduce their annual federal tax liability. The developer, in turn, uses the investor's staged equity payments to pay for costs of developing the restricted-affordable apartments. Thus, the LIHTC program has a triple positive impact: it provides developers with capital to build affordable apartments; it provides affordable housing opportunities to the community; and it leverages public and other private capital by providing the private sector with a tax benefit. State LIHTC programs work nearly identically to the federal LIHTC programs, and they further leverage federal tax credit equity and the other public and private sources of capital.

AB 2817 is a reintroduction, with minor amendments, of AB 35 (2015), which was supported by the City and passed both houses of the Legislature before being vetoed by the Governor in 2015. This bill was one of nine spending bills vetoed by the Governor because the Legislature failed to pass the Managed Care Tax. The Managed Care Tax has been passed by both Houses and Governor Brown's signature is expected.

AB 2817 proposes changes that expand and increase the flexibility of the existing State LIHTC program in order to provide additional resources for the construction of much-needed affordable rental housing. Key revisions to California's program proposed by this bill include an increase to the State program, adding to its current annual cap of $100 million by an additional $100 million annually, each year for the next five years.

AB 2817 will require a majority vote of the Legislature and would take effect immediately as a tax levy, if passed.

IMPACTS TO CITY OF SAN JOSE:

Over the last 25 years, federal and State LIHTC programs have been leveraged to facilitate the creation of over 130 affordable housing developments comprising over 13,900 affordable homes in San José. Given the elimination of San José's approximately $40 million it received annually for affordable housing through the Redevelopment Agency, and the depletion of other State and Federal housing programs, it is imperative that the tax credit programs be maximized and be run as efficiently as possible. AB 2817 is one of two bills—the other being SB 873 (submitted as a separate Council action request)—that would greatly boost the impact and value of the State tax credit program.

Given high development costs in San José, it is extremely difficult to fill the entire financing gap to cover total development costs for new affordable apartments solely through the use of 4% tax credits with tax-exempt bond financing. AB 2817 would increase the amount of State tax credits to be used with federal 4% credits and tax-exempt bonds, and could potentially enable 1-2 more deals per year to proceed locally. These tax credits could also help to finance development proposals with deeper affordability then is currently feasible at this time with just federal 4% tax credits and tax-exempt bonds. In addition, as the City typically acts as tax-exempt bond issuer in our jurisdiction, the City would receive additional up-front and annual fees in connection with bond issuance without incurring direct credit risk incurred when acting as a subordinate lender.

The City should strongly support AB 2817, which would significantly increase the amount of available funding necessary in order to increase, preserve and improve the City's affordable housing stock, thereby helping to create affordable homes that are desperately-needed to house the City's workforce as well as to end chronic homelessness.

POLICY ALIGNMENT:

This bill aligns with the Council-approved *2016 Legislative Guiding Principles and Priorities* to "ensure that state and federal housing and community development related tax programs, policies, and proposals maximize and protect the benefits to San José."

SUPPORTERS/OPPONENTS:

Support: The bill is co-sponsored by: the California Housing Consortium, California Housing Partnership and the Non-Profit Housing Association of Northern California.

Opposed: The bill has no registered opponents at this time.

STATUS OF BILL:

The bill was introduced on February 19. It has been referred to the Assembly Housing and Community Development Committee Bills must pass out of their House of origin by June 3, and then move to the second House for consideration. August 31 is the last day for bills pass out of both Houses for consideration by the Governor.

FOR QUESTIONS CONTACT: Jacky Morales-Ferrand, 408-535-3851

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March 23, 2016

The Honorable David Chiu
Chair, Assembly Housing and Community Development Committee
Legislative Office Building
1020 N Street, Room 162
Sacramento, CA 95814

RE: <u>AB 2817 (Chiu) Tax Credits: Low-Income Housing: Allocation Increase</u>
NOTICE OF SUPPORT *(As amended 03/17/2016)*

Dear Assembly Member Chiu:

The League of California Cities is pleased to support your AB 2817 (Chiu), which would increase the state's Low Income Housing Tax Credit by $300 million to build and rehabilitate affordable housing. The bill also increases the amount available for farmworker housing.

The League has longstanding policy supporting additional state funding for affordable housing. The challenges of funding affordable housing development, however, have increased significantly with the loss of over $1 billion per year of redevelopment housing funds.

Increasing available state tax credits for low-income housing is a great step in beginning to reassemble affordable housing funding streams in California. These credits will leverage additional federal tax credits and tax exempt bond authority and help build many additional units. The additional jobs and economic activity will also contribute to state and local tax revenues.

For these reasons, the League of California Cities supports this legislation. If you have any questions regarding the League's position on this bill, please call Dan Carrigg, Senior Director, at (916) 658-8222 or Kendra Harris, Legislative Representative at (916) 658-8250.

Sincerely,

Jennifer Whiting

Jennifer Whiting
Assistant Legislative Director

cc: Members, Assembly Housing and Community Development Committee
Lisa Engel, Chief Consultant, Assembly Housing & Community Development Committee
William Weber, Principal Consultant, Assembly Republican Caucus

Fact Sheet: AB 2502 (Mullin and Chiu)

Protecting Local Inclusionary Housing Programs

Summary AB 2502 would protect locally enacted inclusionary housing programs, which help ensure that all new housing developments include a certain percentage of homes affordable to lower-income households.

Background Local inclusionary housing programs in California have proven to be one of the most effective tools for producing new homes affordable to working families and creating strong, diverse neighborhoods with a range of housing choices. Nearly 170 cities and counties have some form of inclusionary housing requirement in place as a complement to other local, state, and federal programs to address California's affordable housing shortage.

Inclusionary housing programs have been in place in California for decades. However, an appellate court decision—*Palmer/Sixth Street Properties L.P. v. City of Los Angeles, 175 Cal. App. 4th 1396 (2009)*—has created uncertainty and confusion for local governments and housing advocates regarding the future viability of this important local land use tool. The *Palmer* court held for the first time that the state's Costa-Hawkins rent control law prohibits local governments from creating affordable rental housing through inclusionary programs. In the wake of this decision, a well-established local tool that has provided quality affordable housing to over 80,000 Californians is in doubt.

Restoring Local Discretion AB 2502 restores local governments' ability to enact inclusionary housing programs by clarifying that Costa-Hawkins does not apply. The bill would amend the state's Planning and Zoning Law, the statutory scheme from which much of a local government's land use powers are derived, to make clear that inclusionary zoning is a permissible land use power.

Prior Legislation AB 2502 is identical to AB 1229 (Atkins, 2013), which Governor Brown vetoed, noting that he wanted to await the outcome of *California Building Industry Association v. City of San Jose,* a case challenging the constitutionality of inclusionary policies. The California Supreme Court issued a unanimous ruling in that case in June in favor of inclusionary zoning. With the constitutional question settled, the time is right to address the *Palmer* decision and affirm the ability of local governments to choose to require as a condition of project approval the inclusion of homes affordable to lower-income households.

Support

- Western Center on Law & Poverty (co-sponsor)
- California Rural Legal Assistance Foundation (co-sponsor)
- Non-Profit Housing Association of Northern California (co-sponsor)

Contact: Anya Lawler, 916.282.5103, alawler@wclp.org; Brian Augusta, 916.400.3136, baugusta@housingadvocates.org; Michael Lane, michael@nonprofithousing.org, 415.989.8160 x22

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

RULES COMMITTEE: 3-16-16
ITEM: G.2

CITY COUNCIL ACTION REQUEST			
Department(s): Housing	**Date:** 03/09/16	**Coordination:** City Attorney's Office City Manager's Office	**Dept. Approval:** /s/ Jacky Morales-Ferrand **CMO Approval:**

SUBJECT: AB 2502 (Mullin & Chau). Land Use: Zoning Regulations

RECOMMENDED POSITION: Support

RECOMMENDED ACTION:

1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, support AB 2502 (Mullin & Chau).
2. Recommend a one-week turnaround so that the City's Legislative Advocate in Sacramento can indicate a support position for AB 2502 (Mullin & Chau).

BILL SYNOPSIS:

AB 2502 is identical to AB 1229 (Atkins; Mullin & Leno), first introduced in 2013, which the City Council voted to support. Governor Brown vetoed AB 1229 to allow legal challenges to be resolved. In June 2015 the California Supreme Court upheld San Jose's Inclusionary Zoning policy under California Building Industry Association v. City of San Jose. On Monday, February 29th the Supreme Court declined to hear the case, leaving the California Supreme Court ruling in place and upholding San Jose's law.

Now that the legal challenges to Inclusionary Zoning are resolved, AB 2502 adds language to the State Planning and Zoning Law. The added language will give cities and counties the authority to choose to require the development of inclusionary housing as a condition of development, which may include the provision of rental units that would be affordable to lower-income families. AB 2502 resolves a conflict between local inclusionary zoning ordinances and the State's Costa-Hawkins Rental Housing Act that has been brought to light as a result of the court decision in *Palmer v. the City of Los Angeles*. By resolving this conflict, if AB 2502 passes, it would restore local governments' ability to establish by ordinance inclusionary housing requirements for rental projects that limit rent increases upon changes in tenancy.

IMPACTS TO CITY OF SAN JOSE:

In 2010, the City Council passed a Citywide Inclusionary Housing Ordinance to become effective no later than January 1, 2013. As a result of the *Palmer* appellate court decision, the City inserted language into the Ordinance which would suspend inclusionary obligations on rental housing projects until the *Palmer* decision is overturned, disproved, or depublished by a court, or modified by legislation. Additionally, the BIA filed a successful legal challenge to the Ordinance in 2010. The City successfully appealed the decision to the California Supreme Court. The BIA appealed the California Supreme Court ruling to the United States Supreme Court, which decided not to take the case. The US Supreme Court's decision to not hear the appeal upholds the lower court ruling which declared San Jose's law valid. For consistency, although not required, the Redevelopment Agency

Board also elected to temporarily suspend rental inclusionary requirements in the current Inclusionary Housing Policy in effect in Redevelopment Project Areas.

If AB 2502 passes, the City will have the regulatory tools available to determine how to manage the development of affordable housing in San José. During the inclusionary zoning litigation the City Council approved the Affordable Housing Impact Fee in 2014. If AB 2502 passes the Council will have the ability to determine how fees or regulations on market rate housing will be implemented to ensure that housing is available for lower income populations for lower-income families.

POLICY ALIGNMENT:

This bill aligns with the Council-approved *2016 Legislative Guiding Principles and Priorities* to "Advance the City's inclusionary housing programs by protecting them from challenges in order to facilitate diverse housing opportunities with a range of incomes in key development locations, and by supporting efforts to overturn the Palmer v. City of Los Angeles decision in order to implement rental inclusionary housing."

SUPPORTERS/OPPONENTS:

Support: AB 2502 is co-authored by Assembly Members Bonilla, Burke, Campos, Gordon, and Thurmond. The bill is co-sponsored by the Western Center on Law & Poverty, the California Rural Legal Assistance Foundation, and Non-Profit Housing Association of Northern California.

Oppose: AB 2502 does not have any opponents listed at this time.

STATUS OF BILL:

The bill was introduced on January 19 and is awaiting Committee referral. Bills must pass out of their House of origin by June 3, which then goes to the second House for consideration. August 31 is the last day for bills to pass out of both Houses.

FOR QUESTIONS CONTACT: Jacky Morales-Ferrand, 408-535-3851

ASSEMBLY BILL 1591: TRANSPORTATION FUNDING

Assemblymember Jim Frazier

THE PROBLEM IN BRIEF:

California's transportation infrastructure is extremely underfunded, which has led to significant deferred maintenance and a lost opportunity on economic growth. The current resources are not sufficient to cover the most basic and crucial maintenance and repair of our core transportation infrastructure: state highways, local streets, roads, and bridges. Without increased funding today, the deferred maintenance will soon be too much for our state to catch up.

BACKGROUND:

2015 was supposed to be the year to fix transportation funding in the Capitol. The Governor declared a $6 billion a year need for basic maintenance and repairs to state highways alone and challenged the Legislature to deliver a funding plan to meet that need. A special session was called, hearings were held, and proposals and counter-proposals were floated. Nonetheless, the call for more transportation funding went unanswered.

THE BILL:

AB 1591 answers the call for a long-term sustainable funding solution for transportation focused on relieving congestion, maintaining highways, and improving trade corridors. This bill provides nearly $8 billion a year in additional transportation funding. It also provides clear direction as to how those funds will be used.

AB 1591 takes a broad portfolio approach to investing in our state's transportation infrastructure by:

- Increasing the excise tax on gasoline by 22.5 cents per gallon and indexing it against the Consumer Price Index every three years thereafter. Almost half of this amount (9.5 cents) will restore funding lost from declining tax revenues in just the last two years due to rate adjustments by the Board of Equalization.

  Revenue raised from the gas tax increase (over $3.3 billion annually) will be split 50/50 between the state and local transportation authorities for highway maintenance and rehabilitation, after setting a nominal portion aside to encourage state-local partnerships.

- Increasing the diesel fuel tax by 30 cents a gallon and indexing it, too. Revenue raised ($840 million annually) will be directed right to where trucks need it most—the state's trade corridors.

- Increasing the vehicle registration fee by $38 annually (just over 10 cents a day) and directing those funds ($1.254 billion) to road maintenance and rehabilitation.

- Imposing an electric vehicle surcharge of $165. Consideration will be given to delaying this fee until the second year of ownership and thereafter. Delaying this fee to the second year of ownership allows financial incentives offered at the purchase of such zero-emission vehicles to remain in full effect while ensuring they do their part to help pay for the system they travel on. The $16 million raised will be directed to road maintenance and rehabilitation.

- Requiring repayment of outstanding transportation loans. Now that the General Fund is stable, it's time to pay these loans ($879 million) back. Repayments will be sent directly to cities and counties to boost their road improvement efforts.

- Allocating cap and trade revenue auctions, as follows:

  - 20% (approximately $400 million annually) for major freight corridors. Communities near our major freight corridors have borne the brunt of the nation's goods movement system. Improving congestion in these corridors will inherently improve air quality.

  - 10% ($200 million) more for intercity rail and transit, for a total of 20% of the auction proceeds.

- Restoring the truck weight fees. Again, the General Fund is now stable. It's time for transportation dollars to go back to transportation. This restores $1 billion to the State Highway Account where it belongs.

AB 1591 also includes greater oversight responsibilities for the California Transportation Commission over the state's roadway operation and rehabilitation efforts and imposes maintenance of effort requirements on cities and counties.

Finally, AB 1591 supports local communities and regional planning efforts to reduce greenhouse gas emissions. It provides the critical funding needed to implement sustainable communities' strategies.

FOR MORE INFORMATION

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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

RULES COMMITTEE: 3-23-16
ITEM: G.2

CITY COUNCIL ACTION REQUEST			
Department(s):	**Date:**	**Coordination:**	**Dept. Approval:**
Transportation	3/16/16	City Attorney's Office, Office of Intergovernmental Relations, and Sacramento Legislative Representative	/s/ Jim Ortbal
			CMO Approval:

SUBJECT: AB 1591 (Frazier): Transportation Funding

RECOMMENDED POSITION: Support

RECOMMENDED ACTION:

1. Adopt a position of support for AB 1591 (Frazier) – Transportation funding.
2. Recommend this item be agendized for the March 29, 2016 City Council Meeting so that the City's Legislative Representative can advocate the City's support for AB 1591.

BILL SYNOPSIS:

On January 6, 2016, Assembly Member Frazier introduced AB 1591, a transportation funding plan that proposes to generate new on-going revenues for transportation purposes. Assembly Member Frazier's funding proposal is estimated to raise an estimated $8,000,000,000 annually for state highway and local roadway maintenance and rehabilitation and trade corridor improvements.

AB 1591, is the most recent funding package that has been introduced in Sacramento that focuses on California's deteriorating State highways and local streets and the Governor's call to address State and local transportation infrastructure needs.

AB 1591 creates the Road Maintenance and Rehabilitation Program to address deferred maintenance on the state highway system and the local streets and roads system and the Trade Corridor Improvement Fund. The bill would also require the California Transportation Commission to adopt performance criteria to ensure the efficient use of the funds available for the program. Improvements that could be funded through these revenues include: improvements to transportation facilities that will assist in reducing further deterioration of the existing roadway system and an active transportation or pedestrian/bicycle safety project that is done in conjunction with any other eligible project. These funds may also be used as a source of matching funds in order to obtain state or federal transportation funds.

Revenues would be generated by the following:

- A 22.5-cent per gallon increase in the motor vehicle fuel (gasoline) tax
- A 30-cent per gallon increase in the diesel fuel excise tax
- A registration surcharge of $38 per year imposed on all motor vehicles
- A new $165 annual vehicle registration fee applicable to zero-emission motor vehicles
- Repayment of outstanding loans over the next two years of approximately $879,000,000 made in previous years from various State transportation accounts to the General Fund

In addition, five percent of revenues deposited into the Road Maintenance and Rehabilitation Account would be set aside for counties that currently do not have a transportation sales tax in place but approve one, on or after July 1, 2015. The remaining revenues deposited into the Road Maintenance and Rehabilitation Program would be allocated 50 percent to Caltrans for maintenance on the state highway system and 50 percent for

apportionment to cities and counties. The bill would impose various requirements on agencies receiving the funds. Cities or counties that reach a Pavement Condition Index (PCI) of 85 or more would be able to use its apportionment of funds on transportation priorities other than those stated in the bill.

The bill also addresses the current Board of Equalization (BOE) requirement to annually modify both the gasoline and diesel excise tax rates so that the various changes in the taxes imposed on gasoline and diesel are revenue neutral. AB 1591 would eliminate the annual rate adjustment to maintain revenue neutrality. This bill would, beginning on January 1, 2019, and every third year thereafter, require the BOE to recompute the gasoline and diesel excise tax rates based upon the percentage of change in the California Consumer Price Index. Other bills that the City has supported such as, SBX1-1 (Beall) and SB 321 (Beall) include language to address the BOE requirement to modify the gasoline and diesel excise tax rates. The Governor has also included language in his proposed Plan.

IMPACTS TO CITY OF SAN JOSE:

For several years, transportation maintenance has been underfunded at every level of government, leaving large funding gaps to fix aging systems. As highlighted in the *2016 California's Five-Year Infrastructure Plan,* the State has an estimated 10-year $57,000,000,000 backlog of identified transportation deferred maintenance. Additionally, cities and counties are facing a $78,000,000,000 shortfall over the next decade to maintain the existing network of local streets and roads. Illustrating this need for additional revenues is a TRIP Report released in July 2015, which ranked metro areas based on the condition of their roadways. Those areas with the largest percentage of roadways in poor condition ranked highest; the San Jose metro area ranked fifth in the nation; with 53 percent of the roads considered in poor condition, and the annual cost of vehicle maintenance for residents due to the poor condition of the metro area's roads is $844 annually (eighth among large urban areas in the U.S.).

As stated in the recent Pavement Maintenance Status Report that was presented to Council, the current backlog of deferred maintenance for the City's street network has grown from $250,000,000 in 2010 to $521,500,000 in 2016. According to the Report: *In order to bring the City's streets into overall "good" condition (PCI 70) and reduce the backlog of deferred maintenance, the City would need to invest approximately $100,000,000 annually for 10 Years. The average annual funding level over the next five years is projected to be approximately $13,000,000, or $87,000,000 short of what is needed to properly maintain the pavement system. Unless new additional funding for pavement maintenance is obtained, pavement conditions will continue to decline and the backlog of deferred maintenance will grow to nearly $900,000,000 in 2020 and $1,800,000,000 in 2025.*

AB 1591 would create a transportation funding program that would begin to address the serious shortfall in transportation infrastructure funding experienced by San Jose by providing a stable on-going revenue source for local streets and roads. The City has also supported transportation funding bills SB 16 (Beall) and SBX1-1 (Beall). Unfortunately, SB 16 did not meet the legislative deadlines to move forward and has died. The Transportation Special Session continues concurrently with the regular Legislative Session and Special Session bills, such as SBX1-1, do not have to meet the same constitutional deadlines as other bills. SBX1-1 is currently in the Appropriations Committee awaiting action. Annual revenue estimates for the three transportation funding plans are as follows:

- Governor's Plan (10-year program) – $3,600,000,000
- SBX1-1 (Beall) – $5,000,000,000
- AB 1591 (Frazier) – $8,000,000,000

AB 1591 also incorporates language to address the volatility that local agencies face in the fluctuations in gas tax revenues based on BOE's annual requirement to "true up" the motor vehicle fuel tax. The BOE action in March reduced the City's gas tax revenue by $7,000,000 and with gas prices remaining low it is likely that the BOE will make another downward adjustment to gas tax revenues. Preliminary projections recently made available by the State for 2016-2017 have the City's pavement maintenance gas tax revenues dropping from $3,700,000 to $2,400,000.

POLICY ALIGNMENT:

Included in the Council approved 2016 Legislative Guiding Principles is the following language: *IV. Pursue or Retain Federal and State Funding for Key Efforts – #8. Preserve and pursue California's and San José's share of federal and state transportation funding, as well as increase overall investment to meet the needs for system preservation and improvement; and, IX. Promote Investment in Infrastructure Maintenance and Rehabilitation – #5. Enable the development and protection of transportation funding for the maintenance, repair and operations of local streets, trail systems and roads.*

SUPPORTERS/OPPONENTS:

There are no stated supporters or opponents of the bill at the time of this analysis.

STATUS OF BILL:

The bill has been double referred to the Assembly Committee on Transportation and the Assembly Committee on Revenue & Taxation. At this time, there are no hearings scheduled for the bill.

FOR QUESTIONS CONTACT: Jim Ortbal, Director of Transportation at (408) 535-3845

SB 1053 (Leno)

Co-author Asm. Ting

As Amended April 4, 2016

Housing Opportunities Act

Increasing Access for Families and Veterans

FACT SHEET

SUMMARY

SB 1053 will provide all Californians with a full and fair opportunity to seek housing by ensuring that landlords cannot deny applicants simply because they receive federal, state, or local rental subsidies. SB 1053 will amend the Fair Employment and Housing Act (FEHA) to clarify that housing subsidy vouchers are a protected source of income.

BACKGROUND

California's Housing Crisis
California is experiencing a rental crisis of historic proportions. The shortage of affordable housing contributes to the state's severe homelessness problem, one that particularly impacts homeless veterans. High housing costs also crowd out family spending on basic necessities, such as food and health care, particularly for Californians who are poor. According to the Legislative Analyst's Office, the poorest 25% of California households spend on average 67% of their income for housing.

Federal Housing Choice Vouchers
By far the largest federal housing assistance program in California, Housing Choice Vouchers provide significant rental subsidies to low-income Americans. Over 300,000 families in California— most of which include children, people with disabilities, and/or senior citizens— receive a Housing Choice Voucher to help make rent affordable. Families with vouchers find housing in the private market and pay 30% of their income in rent. The federal government pays the rest. The federal Department of Housing and Urban Development (HUD) oversees the program, and vouchers are administered locally by public housing authorities.

Housing Choice Vouchers, commonly referred to as "Section 8," have a proven track record of helping poor families afford rents in neighborhoods with high-performing schools, high-quality jobs, and reliable public transportation. Vouchers are an effective means of ensuring that children, particularly poor African-American and Latino children, are not trapped in areas of concentrated poverty. For these children, the opportunity to move to a more economically diverse neighborhood leads to improved health, greater academic success, and long-term economic mobility.

Veterans
Housing vouchers allocated specifically for veterans are a critical part of the nationwide push to end chronic veteran homelessness. Those who have served in the military and fought to preserve freedom should not have doors slammed in their faces when they return home.

Consequences of Voucher Denial
All it takes is a few minutes on a Craigslist housing search to understand how common voucher denial is in California. Many postings include a clear message: "NO Section 8." The problem is so pervasive that in some areas, despite spending years on waiting lists, families are forced to return their vouchers to the local housing authority because they cannot find a landlord willing to accept them. Last June, in Santa Clara County, only 14% of families given vouchers were able to use them.

In cities like San Diego, where hundreds of veterans remain on the street because they have nowhere to use their housing vouchers, government officials are desperately seeking help from landlords, often to no avail.

Landlords' blanket refusal to consider voucher holders frustrates the central aim of the Housing Choice Voucher program and increases the harm and severity of California's rental housing crisis. The inability of families and veterans to use their housing vouchers perpetuates a cycle of poverty and segregation. It also means that California may be leaving unused federal funding on the table.

Source of income discrimination is illegal under the Fair Employment and Housing Act, but the law has been interpreted to exclude vouchers.

The District of Columbia and at least nine states—a diverse array including New Jersey, North Dakota, Oklahoma, and Oregon—have taken a stand for housing opportunity by clarifying that housing subsidies are a protected source of income. It is time for California to join their ranks.

SOLUTION

SB 1053 adds housing subsidy vouchers to the sources of income protected by California's Fair Employment and Housing Act.

In so doing, the bill will provide low-income families, homeless veterans, and others with a Housing Choice Voucher the same opportunity to apply for housing as other Californians, tearing down unnecessary barriers that are often based on misguided stereotypes. The bill ensures that landlords cannot deny low-income families and veterans the opportunity to apply for rentals or evict them based solely on the fact that they receive a voucher. Landlords will still be able to screen prospective tenants for credit, criminal history, and other tenant suitability criteria.

Providing voucher holders with equal housing opportunity is crucial to addressing California's ongoing housing crisis and ensuring economic mobility for all.

SUPPORT

National Housing Law Project (Sponsor)

Non-Profit Housing Association of Northern California (Sponsor)

Western Center on Law and Poverty (Sponsor)

- Aids Legal Referral Panel
- American Legion-Department of California
- ACLU of California
- AMVETS-Department of California
- Association of Regional Center Agencies (ARCA)
- Bet Tzedek Legal Services
- Brilliant Corners
- Burbank Housing Development Corportation
- California Alliance for Retired Americans
- California Association of County Veteran Service Officers
- California Association of Housing Authorities (CAHA)
- California Coalition for Rural Housing
- California Council of Churches/Church IMPACT
- California Reinvestment Coalition (CRC)
- California Rural Legal Assistance Foundation
- California State Commanders Veterans Council
- CALPIRG
- Central California Legal Services
- Centro Legal de la Raza
- City of Fremont
- City of Long Beach
- City of Los Angeles
- City of Sunnyvale
- City of Walnut Creek
- City of West Hollywood
- Community Housing Opportunities
- Community Legal Services in East Palo Alto
- County Welfare Directors Association of California (CWDA)
- Disability Rights California
- East Bay Community Law Center
- EveryOne Home
- Faith in Action Bay Area
- Housing and Economic Rights Advocates (HERA)
- Housing California
- Housing Equality Law Project (HELP)
- Housing Leadership Council of San Mateo County
- Housing Rights Center
- Housing Trust of Silicon Valley
- Inner City Law Center
- Law Foundation of Silicon Valley
- Legal Aid Foundation of Los Angeles
- Legal Aid of Marin
- Legal Services of Northern California
- Little Tokyo Service Center
- Los Angeles County Board of Supervisors
- Mental Health Advocacy Services
- Military Officers Association of America
- National Association of Social Workers
- National Housing Law Project
- Neighborhood Legal Services of Los Angeles
- Northern California Community Loan Foundation
- Public Advocates
- Public Counsel
- Public Interest Law Project
- Public Law Center

- San Diego Housing Federation
- San Mateo County Board of Supervisors
- Santa Monicans for Renters' Rights
- Silicon Valley Community Foundation
- SF Council of Community Housing Organizations
- Sonoma County Board of Supervisors
- Strategic Actions for a Just Economy
- Tenants Together
- The Public Interest Law Project
- Urban Habitat
- Villa Del Monte Senior Citizens Housing Community
- VFW-Department of California
- Women Organizing Resources, Knowledge, and Services (WORKS)
- Working Partnerships USA
- YWCA San Francisco & Marin

CONTACT

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SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2015-2016 Regular Session

SB 1053 (Leno)
Version: February 16, 2016
Hearing Date: March 29, 2016
Fiscal: Yes
Urgency: No
TH

SUBJECT

Housing Discrimination: Applications

DESCRIPTION

The Fair Employment and Housing Act makes it unlawful for the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of that person.

This bill would expand the definition of "source of income" to include lawful, verifiable income paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers under Section 8 of the United States Housing Act of 1937, as specified.

BACKGROUND

The Fair Employment and Housing Act (FEHA) was created in 1980 when two prior statutes, the California Fair Employment Practices Act and the Rumford Fair Housing Act, were combined and recast in AB 3165 (Fenton, Ch. 992, Stats. 1980) with the codification of Governor Brown's Reorganization Plan No. 1. Broadly speaking, FEHA prohibits employment and housing discrimination based upon such characteristics as race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, or disability, and provides that it is a civil right to be able to pursue and maintain housing or employment without facing discrimination.

In recent years the Legislature has expanded the protective scope of FEHA to prohibit housing discrimination based on a person's source of income, at first for a limited period of time with SB 1098 (Burton, Ch. 590, Stats. 1999), and then permanently with SB 1145 (Burton, Ch. 568, Stats 2004). Beyond the general prohibition against

discriminating on the basis of one's source of income, FEHA also declares it unlawful to use a financial or income standard in the rental of housing that fail to account for the aggregate income of co-tenants on the same basis as is given married persons, or to use a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent paid by a tenant when the tenant is the recipient of a government rental subsidy. The Legislature has limited FEHA's source of income protection to include only that "lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant," and has stated that "a landlord is not considered a representative of a tenant" for the purpose of this provision. (Gov. Code Sec. 12955 (p).)

This bill would expand FEHA's source of income protection to include income paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and federal, state, or local housing subsidies, such as federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937.

CHANGES TO EXISTING LAW

Existing law, the Fair Employment and Housing Act, declares it to be against public policy to discriminate on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information in housing accommodations. (Gov. Code Sec. 12920.)

Existing law declares that the opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, genetic information, or any other specified basis is a civil right. (Gov. Code Sec. 12921.)

Existing law declares it unlawful for the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of that person. (Gov. Code Sec. 12955.)

Existing law specifies certain acts that constitute unlawful discrimination, including either of the following:

- using a financial or income standard in the rental of housing that fails to account for the aggregate income of persons residing together or proposing to reside together on the same basis as the aggregate income of married persons residing together or proposing to reside together; or
- in instances where there is a government rent subsidy, using a financial or income standard in assessing eligibility for the rental of housing that is not based on the portion of the rent to be paid by the tenant. (Gov. Code Sec. 12955 (n), (o).)

Existing law specifies that it shall not constitute discrimination based on source of income to make a written or oral inquiry concerning the level or source of income. (Gov. Code Sec. 12955 (p).)

Existing law provides that a person intends to unlawfully discriminate if one of the protected classes played a motivating factor in committing a discriminatory housing practice, as specified. A violation can be found when the act has the effect of unlawfully discriminating, regardless of the intent, as specified. (Gov. Code Sec. 12955.8.)

Existing law defines "source of income" to mean lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant, but specifies that a landlord is not considered a representative of a tenant. (Gov. Code Sec. 12927, 12955 (p).)

This bill defines "source of income" to mean lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers under Section 8 of the United States Housing Act of 1937.

COMMENT

1. Stated need for the bill

The author writes:

> California is experiencing a rental crisis of historic proportions. The shortage of affordable housing contributes to the state's severe homelessness problem, one that particularly impacts homeless veterans. High housing costs also crowd out family spending on basic necessities, such as food and health care, particularly for Californians who are poor. According to the Legislative Analyst's Office, the poorest 25 [percent] of California households spend on average 67 [percent] of their income for housing.
>
> By far the largest federal housing assistance program in California, Housing Choice Vouchers, provides significant rental subsidies to low income Americans. Over 300,000 families in California -- most of which include children, people with disabilities, and/or senior citizens -- receive a Housing Choice Voucher to help make rent affordable. Families with vouchers find housing in the private market and pay 30 [percent] of their income in rent. The federal government pays the rest. The federal Department of Housing and Urban Development (HUD) oversees the program, and vouchers are administered locally by public housing authorities.
>
> Source of income discrimination is illegal under the Fair Employment and Housing Act, but the law has been interpreted to exclude vouchers. Landlords' blanket

refusal to consider voucher holders frustrates the central aim of the Housing Choice Voucher program and increases the harm and severity of California's rental housing crisis. The inability of families and veterans to use their housing vouchers perpetuates a cycle of poverty and segregation. It also means that California may be leaving unused federal funding on the table.

SB 1053 adds housing subsidy vouchers to the sources of income protected by California's Fair Employment and Housing Act. This bill would amend the definition of "source of income" to also include federal, state, or local housing assistance or subsidies paid either to the tenant or directly to the landlord on behalf of the tenant. In so doing, the bill will provide low income families, homeless veterans, and others with a Housing Choice Voucher the same opportunity to apply for housing as other Californians, tearing down unnecessary barriers that are often based on misguided stereotypes. This bill ensures that landlords cannot deny low-income families and veterans the opportunity to apply for rentals or evict them based solely on the fact that they receive a voucher. Landlords will still be able to screen prospective tenants for credit, criminal history, and other tenant suitability criteria.

2. Federal housing assistance programs

The U.S. Housing Act of 1937 authorizes housing assistance payments "[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing." (42 U.S.C. Sec. 1437f(a).) The Housing Choice Voucher program -- popularly known as "Section 8" -- offered pursuant to the Housing Act is the federal government's "major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market." (*See* U.S. Department of Housing and Urban Development, *Housing Choice Vouchers Fact Sheet* <http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8> [as of March 23, 2016].) Administered by the U.S. Department of Housing and Urban Development in partnership with local public housing agencies, this program allows individuals and families to receive federal housing assistance in the form of a voucher that can be used to acquire housing on the private market.

In order to use a voucher under the program, a participant must find a suitable housing unit that meets certain minimum health and safety standards and that is offered by a landlord willing to participate in the program. Once initiated, the voucher program's housing subsidy is paid directly to the landlord through a local public housing agency, and the program participant pays the difference between the rent charged by the landlord and the amount subsidized by the housing agency. Eligibility requirements to participate in the program are generally set by local housing agencies, though certain federal requirements govern program eligibility as well. In general, a participant's income may not exceed 50 percent of the median income for the county or metropolitan

area in which the participant lives. The program requires participants to pay 30 percent of their monthly income toward rent and utilities, and although it does not limit the amount of rent a landlord may charge, it does limit how much participants can pay as a percentage of their monthly income in certain circumstances.

3. Discrimination against housing assistance recipients

Despite the availability of housing assistance programs like the federal Housing Choice Voucher program, some program participants struggle to find landlords willing to accept housing assistance payments in their communities and end up not being able to take advantage of the benefits these programs offer. Legal Aid of Marin, writing in support of SB 1053, notes:

> The Marin Housing Authority reported that it issued 274 housing vouchers in 2014, but 209 of these recipients -- most of whom waited years to get a chance for decent and safe housing -- lost vouchers because they expired before the family could obtain housing.

Several groups in support of this bill argue that housing assistance benefits go unclaimed because large numbers of landlords choose not to participate in housing assistance programs. The East Bay Community Law Center, for example, writes:

> In our experience, many tenants in the Bay Area are routinely discriminated against and out-right refused housing by landlords who refuse to accept housing subsidies.
> . . .
> Unfortunately, because such [subsidies] are not considered a protected source of income under FEHA, landlords are free to refuse to consider voucher holders as tenants. Such blanket refusals, often based on misguided stereotypes, [frustrate] the central aim of rental assistance programs and increases the harm and severity of California's housing crisis.

This bill would prohibit landlords from refusing to provide housing accommodations to recipients of federal, state, or local public assistance and federal, state, or local housing subsidies on the basis of their participation in such programs. Under this bill, landlords would remain free to reject tenancy applications from program participants, provided they do so on otherwise lawful grounds that are not based on a participant's receipt of a housing subsidy. Landlords would also remain free to charge rents as allowed under law, and would not be required to reduce rents even if chosen rent levels would make a unit too expensive for a voucher holder to afford. Further, landlords would continue to be able to use appropriate financial and income standards in making rental decisions, like verifying income levels or checking creditworthiness. However, landlords would no longer have the option to forgo participation in housing subsidy programs, and would likely be required to undertake certain administrative actions -- like submitting

units for health and safety inspections -- when providing housing to a recipient of housing assistance.

4. Opposition concerns

A coalition of business and property associations oppose this bill chiefly due to concerns over administrative and financial burdens that property owners may have to endure. The California Chamber of Commerce, for example, argues that SB 1053 would significantly increase the administrative burden placed on both rental property owners and housing agency staff should this bill result in higher usage rates of housing assistance programs like the federal Housing Choice Voucher program. The California Chamber of Commerce also asserts that this bill would increase the costs associated with renting residential property due to, among other reasons, delays in having housing authorities inspect rental units and assess rental rates before a tenant using housing assistance can move in, higher insurance costs for landlords who accept housing assistance tenants, and delays or denials by housing authorities to landlord requests to raise rental rates. In sum, the California Chamber of Commerce writes:

> Under current law, the Section 8 program is voluntary. We agree that Section 8 vouchers play an important role in helping low-income Californians find housing, and many of our members participate in the program. However, because of the significant number of challenges associated with the program, a statewide mandate is not feasible for property owners or for housing authorities.

In addition to concerns over increased fiscal and administrative burdens, several apartment associations argue that this bill would interfere with property owners' freedom to contract and would unreasonably interfere with private property rights. The Apartment Association of Orange County, for example, asserts that this bill would:

> [deprive] property owners of use of their property, and may constitute an unconstitutional taking. It requires an owner to contract with the federal government [via a Housing Assistance Payment Contract], become subject to federal laws and regulations to which the owner would not otherwise be subject, accept government-mandated lease terms, and participate in burdensome regulatory compliance obligations.

Staff notes that while these concerns are not without merit, several states have enacted source of income protections similar to those proposed in SB 1053 apparently without suffering the adverse effects articulated by opposition stakeholders. On this point, the Housing Rights Center states:

> While not yet protected under federal law, discrimination against Section 8 voucher holders is prohibited by civil rights laws in more than 13 states (as of 2013) and in many local jurisdictions. As a matter of fact, in the District of Columbia, housing

discrimination based on a person's "source of income" including Housing Choice Vouchers, has been prohibited under the D.C. Human Rights Act (D.C. Code 2-1401.02 (29)) since 1977.

The Committee may wish to further enquire whether experience in other jurisdictions with existing source of income protections has yielded adverse consequences along the lines suggested by opposition stakeholders.

5. Pending litigation

According to the author, the City of Santa Monica is currently involved in litigation with the Apartment Association of Los Angeles County and several named individuals concerning a city ordinance that prohibits housing discrimination on the basis of source of income, including rental assistance from federal, state, local, or non-profit administered benefit or subsidy programs. Among the issues being litigated by the parties is whether the Fair Employment and Housing Act (FEHA) preempts this type of local ordinance.

In the past, this Committee has raised concerns about bills that interfere with pending litigation. Any such interference could result in a direct financial windfall to a private party, prevent a court from deciding an action based upon the laws in place at the time the cause of action accrued, or create a situation where the legislative branch is used to circumvent the discretion and independence of the judicial branch. This bill, however, does not raise the concerns normally associated with measures that could impact pending litigation. First, this bill does not make any changes to FEHA regarding its preemptive character. Under the California Constitution, "[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, Sec. 7.) In general, a conflict exists when a local ordinance (1) duplicates a state statute, (2) contradicts a statute, or (3) enters an area fully occupied by general law. (*See Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 954.) While this bill -- like many other bills passed by the Legislature -- might ultimately duplicate or contradict a local ordinance, there is no indication that the author seeks to alter the preemptive character of FEHA generally, or its prohibition on source of income discrimination specifically, through SB 1053. Second, this bill is not intended to be retroactive and would not compromise the independence of the judicial branch nor circumvent its discretion to expound and interpret California law in pending litigation concerning the City of Santa Monica's ordinance.

6. Technical amendment

Among other things, SB 1252 (Corbett, Ch. 524, Stats. 2010) made technical revisions to certain provisions of the Fair Employment and Housing Act (FEHA) that declare source of income to be a characteristic protected from housing discrimination. One of the

technical changes adopted in SB 1252 at the suggestion of this Committee was to add a definition of the term "source of income" to FEHA's general definitions provision, which appears in Government Code Section 12927. SB 1053 would modify the definition of "source of income" as it appears in the section of FEHA specific to housing discrimination, but would leave undisturbed the parallel definition that appears in FEHA's general definitions provision. In order to maintain consistency between these two definitions, the Committee may wish to consider amending the definition of "source of income" in Government Code Section 12927 as follows.

Suggested amendment

Amend subdivision (i) in Government Code Section 12927 to read: (i) "Source of income" means lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f).

Support: Aids Legal Referral Panel; American Legion-Department of California; AMVETS-Department of California; The Arc, California; Association of Regional Center Agencies; Bet Tzedek Legal Services; California Alliance for Retired Americans; California Association of County Veteran Service Officers; California Church IMPACT; California Public Interest Research Group; California Rural Legal Assistance, Inc.; California State Commanders Veterans Council; Central California Legal Services, Inc.; Centro Legal de la Raza; City of Long Beach; Community Housing Opportunities; Community Legal Services in East Palo Alto; County Welfare Directors Association of California; East Bay Community Law Center; EveryOne Home; Faith in Action Bay Area; Housing California; Housing Equality Law Project; Housing Leadership Council of San Mateo County; Housing Rights Center; Inner City Law Center; Law Foundation of Silicon Valley; Legal Aid Foundation of Los Angeles; Legal Aid of Marin; Legal Services of Northern California; Mental Health Advocacy Services, Inc.; Military Officers Association of America, California Council of Chapters; National Association of Social Workers, California Chapter; Neighborhood Legal Services of Los Angeles County; Public Advocates; Public Counsel; Public Interest Law Project; Public Law Center; Santa Monicans for Renters' Rights; Sonoma County Community Development Commission; United Cerebral Palsy California Collaboration; Urban Habitat; VFW-Department of California; Villa Del Monte Senior Citizens' Housing Community; Working Partnerships, USA; six individuals.

Opposition: Apartment Association, California Southern Cities; Apartment Association of Orange County; Apartment Association of Greater Los Angeles; California Apartment Association; California Association of Realtors; California Building Industry Association; California Business Properties Association; California Chamber of

Commerce; East Bay Rental Housing Association; San Diego County Apartment Association; Santa Barbara Rental Property Association; North Valley Property Owners Association; Western Manufactured Housing Communities Association

HISTORY

Source: Non-Profit Housing Association of Northern California; Western Center on Law and Poverty

Related Pending Legislation: None Known

Prior Legislation:

AB 447 (Maienschein, Ch. 432, Stats. 2015) prohibited real property insurers from, among other things, failing or refusing to accept an application, issue, or cancel a policy based on the level or source of income of individuals residing or intending to reside on the real property, or based on the receipt of assistance, intended for housing, from the federal or state government, or from a local public entity, by an individual or group of individuals residing or intending to reside upon the property, as specified. This bill also prohibited real property insurers from requiring this information on an application for insurance, as specified.

SB 1252 (Corbett, Ch. 524, Stats. 2010) made technical revisions to several provisions of the Fair Employment and Housing Act, including consistently listing "source of income" as a characteristic that is protected from housing discrimination in various sections of the act.

SB 1145 (Burton, Ch. 568, Stats. 2004), among other things, removed the sunset date and thereby extended indefinitely a provision adopted in SB 1098 (Burton, Ch. 590, Stats. 1999), which prohibited discrimination under the Fair Employment and Housing Act on the basis of a person's source of income, as specified.

SB 1098 (Burton, Ch. 590, Stats. 1999) prohibited, until January 1, 2005, discrimination under the Fair Employment and Housing Act on the basis of a person's source of income, the failure to account for the aggregate income of co-residents, or the failure to exclude a government rent subsidy from that portion of the rent to be paid by the tenant in assessing his or her eligibility for rental housing.

AB 3165 (Fenton, Ch. 992, Stats. 1980) *See Background*.

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