



Memorandum

**TO: RULES AND OPEN
GOVERNMENT COMMITTEE**

FROM: Leslye Krutko

SUBJECT: SEE BELOW

DATE: February 5, 2009

Approved

Christine J. Shuppy

Date

2/5/09

Council District: Citywide
SNI: N/A

SUBJECT: SB 16 AND H.R. 598 — RELATED TO LOW INCOME HOUSING TAX CREDITS

RECOMMENDATION

The Housing Department recommends that:

1. The Mayor and City Council support SB 16 (State) and H.R. 598 (Federal).
2. The Committee provide a one-week turn around for Mayor and City Council review.

OUTCOME

If the Rules and Open Government Committee and the Mayor and City Council accept staff's recommendation, the City's State and Federal lobbyists may begin seeking support for SB 16 and H.R. 598.

BACKGROUND

Congress created the federal Low Income Housing Tax Credit Program in 1986. It replaced traditional housing tax incentives with a tax credit that enables sponsors of housing affordable to lower-income households to raise project equity through the sale of tax benefits to investors. Recognizing the extremely high cost of developing housing in California, the State legislature authorized a State low-income housing tax credit program to augment the federal tax credit program. The State credit is only available to a project which has previously received, or is concurrently receiving, an allocation of federal credits. Thus the State program does not stand alone, but instead, supplements the federal tax credit program.

Most credits are sold to corporate or individual investors through public or private syndication. Investors benefit from the tax credit by purchasing an ownership interest in one or more tax credit housing projects. In turn, investors claim a dollar-for-dollar credit against their tax liability over a ten-year period. Partnership equity contributed to the project in exchange for the credit typically finances 30-60% of the capital costs of project construction. The net amount of equity proceeds contributed to a project is based on investor contributions (the present value of the ten-year credit) less syndicator overhead and fees and other syndication-related costs.

The economic meltdown has had a significant impact on the tax credit market. Corporations no longer have sufficient tax liability to utilize tax credits that are offered by the State and federal government. Additionally, investors and corporations are wary of making long-term investments in the current economic environment. In California, tax credits account for up to 40 percent of new construction costs for affordable rental housing. As the markets have tightened, more projects are falling apart as additional financing conditioned on the equity from tax credits is taken back. While all proposed projects are negatively impacted by the decline in investment, proposed projects serving special needs populations and the homeless are experiencing the greatest difficulties.

To address the growing crisis, legislators at the State and federal level have introduced legislation to encourage the use of the tax credit programs. The legislation includes SB 16 (Lowenthal) and H.R. 598 (Rangel). The purpose of these bills is to create incentives for companies to buy these credits and create an influx of money for these projects.

ANALYSIS

A fact sheet and analysis of SB 16 and H.R. 598 are attached.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This legislative item does not meet any of the above criteria.

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COORDINATION

This memorandum was coordinated with the City Attorney's Office and the Intergovernmental Relations Director in the City Manager's Office.

POLICY ALIGNMENT

The attached fact sheet and analysis is consistent with the Council-adopted 2009 Legislative Guiding Principles, and the Council-adopted guidelines.

CEQA

Not a project



LESLYE KRUTKO
Director of Housing

For more information call Melissa Whatley, Policy Manager, at (408) 975-4418

Attachments (2)

SB 16 (LOWENTHAL) – LOW-INCOME HOUSING TAX CREDIT

What's the issue the bill is trying to resolve?

SB 16 responds to the recent meltdown in the national financial market by stimulating tax credit equity investment in housing affordable to lower-income households. SB 16 would temporarily make the State's Low-Income Housing Tax Credit refundable. Today, diminished tax liabilities have greatly reduced investors' interest in the tax credits, which has lowered the credits' value. SB 16 allows Low Income Housing Tax Credits, awarded between 2008 and 2010, to be refundable for investors or developers, in order to counter the recent significant drop in investor interest and subsequent decrease in tax credit value. SB 16 will raise additional capital to construct affordable places to live.

How would the passage of this bill affect San José?

In the past several months, as the financial markets have worsened, the housing sector has been drastically impacted. Affordable housing developers have had projects sidelined due to the lack of tax credit investors. While no specific projects have been sidelined or lost in San José, the City is experiencing the impacts of a more restrictive financial market where investors are less interested in tax credits. However, should this trend continue, the Department is worried that future projects may not get built. Tax credits can account for up to 40 percent of new construction costs for affordable rental housing, and are often the last piece of the financing puzzle that developers secure because projects must be approved and ready to go before tax credits are awarded. Currently, it has become more difficult for affordable housing developers to not only garner investor interest, but to receive tax credit pricing that makes a project financially feasible. As a result, the decrease in tax credit pricing results in larger funding gaps and the demand from developers seeking additional City funds. SB 16 would increase the value of tax credits for investors and promote investment in San José.

What is staff's Proposed Position?

Staff recommends that the City support SB 16.

Who are the bill's supporters and opponents?

As of February 2, 2009, the following organizations support SB 16: Non-profit Housing Association of Northern California, California Housing Partnership Corporation, Community Economics, and Housing California. The California Housing Consortium (CHC) opposes SB 16 because of a recent court ruling by the First Appellate District Court of California: State Building and Construction Trades Council V. John C. Duncan as Director, etc., et al. (A115491; San Francisco County Superior Court No. 506079). The court determined that tax incentives are not the equivalent of direct government payment of subsidies. CHC believes that this ruling is likely to trigger the requirement for the payment of prevailing wage because such a direct payment could be characterized as the equivalent of a direct government payment of subsidies. Since the City of San Jose already requires the payment of prevailing wage, the prevailing wage argument is of no consequence. In addition, the California Council for Affordable Housing (CCAH) opposes SB 16 based on similar concerns.

What is the current status of the measure?

SB 16 (Lowenthal) was introduced on December 1, 2008, amended on January 8, 2009, and referred to the Senate Committee on Revenue and Tax. A hearing has been set for February 4, 2009.

H.R. 598 (RANGEL) – AMERICAN RECOVERY AND REINVESTMENT TAX ACT

What's the issue the bill is trying to resolve?

The House Ways and Means Committee introduced the American Recovery and Reinvestment Tax Act (H.R. 598), which changes the 9% tax credit program. This change allows 100% of the unused 2008 tax credits and 40% of the 2009 tax credit allocation to be exchanged back to the Treasury Department for a cash grant of \$0.85 per dollar of each returned credit. The funds will then be granted or loaned by the allocating state agency to developers building affordable rental homes.

How would the passage of this bill affect San José?

The economic meltdown has crippled public-private partnership because corporations do not have sufficient tax liability to utilize tax credits. Additionally, investors and corporations are wary of making long-term investments in the current economic environment. In 2008, only \$4.5 billion of private equity was invested—this is half the amount that was invested in 2007. The outlook for 2009 looks bleak as several analysts are predicting further decline. Tax credits account for up to 40 percent of new construction costs for affordable rental housing and are often the last piece of the financing puzzle that developers secure. As the markets have tightened, more projects are falling apart as additional financing conditioned on the equity from tax credits is taken back. While all proposed projects are negatively impacted by the decline in investment, proposed projects in rural areas and those serving special needs populations and the homeless are experiencing the greatest difficulties.

In San José, a decline in private equity investment will slow the development of special needs housing and housing for homeless families and individuals. Initiatives supported by Destination: Home and other advocacy organizations may be delayed if private investment is not available or drastically decreases. Even as census-takers spread out in cities across the country last week in an attempt to count homeless populations, advocates and experts point to a bevy of evidence that homelessness is rising and will continue to, most notably among families with children. In California, the state budget problems have led to the elimination of funding for emergency housing assistance this year. As a result, it will be difficult for San José to address the needs of its most vulnerable populations. H.R. 598 encourages the development of affordable multi-family rental housing that will help these populations

What is staff's Proposed Position?

Staff recommends that the City support H.R. 598.

Who are the bill's supporters and opponents?

As of February 2, 2009, supporters of the 9% tax credit program include Housing California. No opponents of H.R. 598 have been identified.

What is the current status of the measure?

H.R. 598 was introduced on January 16, 2009 and a supplemental report was filed by the Committee on Ways and Means on January 28, 2009. H.R. 598 was also referred to the House

Committee on Energy and Commerce, House Committee on Science and Technology, House Committee on Education and Labor, and House Financial Services.