

SENATE THIRD READING
SB 364 (Mitchell)
As Amended July 27, 2020
2/3 vote. Tax Levy

SUMMARY:

Changes the classification of nonresidential active solar energy systems from real property to personal property and creates a property tax exemption for systems constructed prior to January 1, 2025 if voters approve Proposition 15, an initiative constitutional amendment to require fair market value based property tax assessments for certain commercial and industrial real property.

Major Provisions

- 1) Changes the classification of a "nonresidential" active solar energy system from real property to personal property by statutorily redefining terms. Specifically:
 - a) Defines "personal property" as including a nonresidential active solar energy system; and,
 - b) Defines "improvements" as excluding a nonresidential active solar energy system.
- 2) Creates a personal property tax exemption for a nonresidential active solar energy system.
- 3) Makes the existing real property new construction exclusion for active solar energy systems inapplicable to a nonresidential active solar energy system.
- 4) Exempts a nonresidential active solar energy system constructed or installed prior to January 1, 2025, from property taxation as personal property, as specified.
- 5) Limits, with respect to a system constructed or installed prior to this bill's operative date, the above personal property exemption to a nonresidential active solar energy system that was receiving the new construction exclusion on this bill's operative date.
- 6) Allows the personal property exemption to continue until there is a subsequent change in ownership of the nonresidential active solar energy system.

COMMENTS:

California's Constitution allows the Legislature to exempt personal property from property taxation: Section 2 of Article XIII of the California Constitution authorizes the Legislature, with a 2/3 vote, to classify personal property for differential taxation or for exemption. This bill seeks to use this provision of the Constitution to classify nonresidential active solar energy systems as personal property and create a property tax exemption on this basis. This bill is keyed with a 2/3 vote consistent with the Constitution's requirement.

California's Constitution allows the addition of an active solar energy system to a property to be "excluded" from property tax assessment on the basis that it is real property: When a substantial addition to real property occurs, the law requires the assessor to increase the assessment to reflect the value of the "newly constructed" property. However, the Constitution provides certain new construction exclusions. Any value added by additions where a new construction exclusion is

available is not subject to property tax until there is a subsequent change in ownership of the property.

In 1980, Proposition 7 amended the Constitution to create a new construction exclusion for the construction or addition of an active solar energy system. For the last 40 years, these active solar energy systems have been classified and treated as real property. The solar exclusion applies to both residential and nonresidential systems equally and applies to a wide range of systems from a utility-scale solar project to a rooftop installation on a home.

What does this bill do? To preserve the tax benefits currently bestowed on active solar energy systems via the new construction exclusion if Proposition 15 passes, this bill seeks to preemptively reclassify nonresidential active solar energy systems from real property to personal property and create a property tax exemption for this property. The personal property tax exemption would apply to systems constructed or installed before January 1, 2025, and allows the exemption to continue to apply on and after this date, until there is a subsequent change in ownership of the system. However, systems constructed or installed before Proposition 15's operative date, would be eligible for this exemption only if that system was excluded from assessment on Proposition 15's operative date.

Residential active solar energy systems would continue to be classified as real property and remain eligible for the new construction exclusion, while nonresidential active solar energy systems would become ineligible for the new construction exclusion. This bill also provides that if voters do not approve Proposition 15, then its provisions are inoperative and will be effectively repealed on January 1, 2021.

Together, these provisions serve to transition a pre-existing property tax incentive from an "exclusion" to an "exemption" to maintain the status quo for nonresidential active solar energy systems and continue to encourage and to provide incentives for the development of solar energy.

The property tax incentive for the installation of an active solar energy system is in the form of an exclusion, it is not an exemption: If voters approve Proposition 15, then an active solar energy system currently excluded from assessment under the new construction exclusion that is located on a commercial and industrial property would effectively become subject to property tax. This is because an "exclusion" from property tax is not the same thing as an "exemption" from property tax. Generally, for commercial and industrial property that transition to a fair market value standard, the new construction and change in ownership provisions that limit when real property values are increased (for new construction) or reset to fair market value (for a change in ownership) would no longer apply. Consequently, the solar new construction exclusion no longer applies and the active solar energy system would become subject to property tax as the entire property, including the solar system, would be valued at its fair market value.

According to the Author:

Since the 1980s, California voters and the Legislature have provided tax exemption to residential and commercial projects for solar energy projects to incentivize the state's transition to renewable energy and help reduce the upfront cost of solar energy system installation. Existing law provides exemption from taxation to nonresidential active solar energy systems constructed or installed prior to January 1, 2025 under the 'newly construction' exclusion, until there is subsequent change in ownership. Unfortunately, the Schools and Communities First (SCF) split-roll initiative, currently on the November 3rd ballot, removes this definition, inadvertently

causing full value re-assessment of nonresidential solar energy systems that are exempt under current law.

SB 364 seeks to preemptively correct the unintended impact of the upcoming SCF split-roll initiative on nonresidential solar energy systems in the state. SB 364 ensures that nonresidential active solar energy systems in the state constructed or installed prior to January 1, 2025, as already provided in current law, continue to be exempted from taxation by reclassifying them as personal property. In the event the split-roll initiative passes, SB 364 will ensure preservation of the existing exemption as intended. If, however, the split-roll ballot initiative is not approved at the statewide general election, SB 364 becomes inoperative preserving the existing law exemption for nonresidential solar energy generation systems.

Arguments in Support:

Supporters state "solar's current tax treatment for commercial and utility-scale projects incentivizes CA's transition to renewable energy by lowering projects' costs to ratepayers. The tax exclusion for solar is passed through to ratepayers in direct cost savings, reducing the cost of meeting state clean energy goals. Should this exclusion be impacted by passage of Proposition 15, solar projects would face uncertainty about future costs and delays in both new and existing projects, adding to the challenge of meeting our clean energy and climate goals." Supporters further state that "SB 364 is an effort to sustain an existing tax exclusion, which the voters approved by a 2-1 margin and upon which the state and its ratepayers have relied for 40 years."

Arguments in Opposition:

Opponents state "this measure is unconstitutional, noting it is well settled that the Constitution imposes the property tax on real property and the Legislature has no authority to exempt real property from taxation. At the same time, the Constitution allows the Legislature, with a 2/3's vote of both houses, to exempt personal property from property taxes. The courts have closely guarded against the legislative temptation to evade the prohibition against exemptions from the property tax by reclassifying 'real property' as something else."

FISCAL COMMENTS:

No estimate.

VOTES:**SENATE FLOOR: 38-0-0**

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Glazer, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Jones, Leyva, McGuire, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Stone, Umberg, Wieckowski, Wiener, Wilk

UPDATED:

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