
UNFINISHED BUSINESS

Bill No: SB 364
Author: Mitchell (D)
Amended: 7/27/20
Vote: 27

PRIOR SENATE VOTES NOT RELEVANT

ASSEMBLY FLOOR: 56-12, 8/3/20 - See last page for vote

SUBJECT: Change in ownership: nonresidential active solar energy systems:
initiative

SOURCE: Author

DIGEST: This bill changes the classification of nonresidential active solar energy systems from real property to personal property, and creates a new 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.

Assembly Amendments delete the previous version of the bill, and insert its current contents.

ANALYSIS:

Existing law:

- 1) Provides that all property is taxable and shall be assessed at the same percentage of fair market value, unless explicitly exempted by the Constitution or federal law (California Constitution, Article XIII, Section One).
- 2) Authorizes the Legislature, with a 2/3 vote, to classify *personal* property for differential taxation or for exemption (California Constitution, Article XIII, Section Two).

- 3) Limits the maximum amount of any ad valorem tax on *real* property at 1% of full cash value, and directs assessors to only reappraise property when newly constructed, or when ownership changes (California Constitution, Article XIII A, Section One, as added by Proposition 13, 1978).
- 4) Excludes from new construction the addition of an active solar energy system (California Constitution, Article XIII A, Section Two, as added by Proposition 7, 1980)
- 5) Implements the active solar energy system new construction exclusion to apply to both residential and nonresidential systems equally, including a wide range of systems from a utility-scale solar farm to a rooftop installation on a home, which is due to sunset after the 2023-24 fiscal year.
- 6) Defines real property to include improvements.
- 7) Provides that the active solar energy system new construction exclusion applies only until there is a change in ownership.
- 8) Directs assessors to value personal property each year, generally based on its adjusted cost as reported by the taxpayer on its business personal property statement.

This bill:

- 1) Changes the classification of a "nonresidential" active solar energy system from real property to personal property by statutorily redefining terms, including:
 - a) Defining "personal property" as including a nonresidential active solar energy system; and,
 - b) Defining "improvements" as excluding a nonresidential active solar energy system.
- 2) Exempts nonresidential active solar energy systems from personal property tax, so long as the system:
 - a) Is constructed or installed before January 1, 2025; systems constructed or installed after that date are not exempt.
 - b) Was excluded from new construction on the effective date of this bill.

- 3) Provides that the exemption applies until there is a change in ownership, using the definition in current law.
- 4) Limits the current active solar energy system new construction exclusion to include only residential systems.
- 5) Defines “nonresidential active solar energy system” using the same definition from the new current new construction exclusion to include a system that is not constructed on a residential property, defined as real property used as residential property, including both single-family and multiunit structures, and the land on which those structures are constructed or placed.
- 6) Provides that it takes effect only if voters approve an initiative at the November 2020 general election that adds a new Section 4.5 to Article XIII A of the California Constitution, and repeals its provisions if the initiative does not receive a majority of votes.
- 7) States that its provisions are to be construed liberally so as to effectuate their intent, policy, and purposes.
- 8) Provides that its provisions are severable.
- 9) Makes legislative findings and declarations supporting its purposes.
- 10) Makes technical and conforming changes.
- 11) Takes effect immediately as a tax levy.

Background

If Proposition 15 passes, nonresidential active solar energy systems that are currently excluded from new construction reassessment would become subject to fair market value assessment under current law. This bill seeks to preemptively reclassify nonresidential active solar energy systems from real property to personal property, and then exempt them from personal property taxation, but only if voters approve the initiative. As such, SB 364 converts a current real property "exclusion" into a personal property tax exemption to maintain the status quo for nonresidential active solar energy systems should voters approve Proposition 15.

Residential active solar energy systems would continue to be classified as real property, and eligible for the new construction exclusion. Nonresidential active solar energy systems would become ineligible for the new construction exclusion

but would be exempt from personal property taxation so long as they are currently excluded or if they are installed or constructed before January 1, 2025.

Related/Prior Legislation

Earlier this year, the Senate approved AB 105 (Ting), which is almost identical to this bill. SB 364 differs from AB 105 by limiting the personal property tax exemption for nonresidential active solar energy systems to only those systems that are excluded from new construction on the effective date of the bill.

AB 105 Support. American Wind Energy Association; California Community Choice Association; Capital Dynamics, Inc.; Coalition for Clean Air; De Shaw Renewable Investments; EDF Renewables; First Solar, Inc.; Idemitsu Renewables; National Electrical Contractors Association; Natural Resources Defense Council; RWE Renewables Americas, LLC; Recurrent Energy, LLC; Spowe; State Building & Construction Trades Council of California; Sunpower Corporation; Union of Concerned Scientists; and, Vote Solar supported AB 105.

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

According to the State Board of Equalization, the revenue impact of SB 364 is indeterminable.

SUPPORT: (Verified 8/19/20)

Advancement Project
Alliance San Diego
Almond Alliance of California
Berkshire Hathaway Energy
BHE Renewables
California Calls
California League of Conservation Voters
California Solar & Storage Association
California Tax Reform Association
California Teachers Association
City of San Jose
Clearway Energy Group
Climate Resolve
Common Sense
Communities for a Better Environment
Evolve California
Housing California

Independent Energy Producers Association
Large-scale Solar Association
League of Women Voters of California
Los Angeles Mayor Eric Garcetti
SEIU California
Sierra Club California
Silicon Valley Clean Energy
Solar Energy Industries Association
TechEquity Collaborative
Tenaska
Working Partnerships USA

OPPOSITION: (Verified 8/4/20)

California Assessors' Association
California Business Roundtable
California Farm Bureau Federation

ARGUMENTS IN SUPPORT: 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 OPPOSITION: According to the California Assessors' Association, “Active solar systems have always been considered by assessors, the

Board of Equalization and the Legislature to be real property subject to the property tax imposed by the state constitution. After the passage of Proposition 13 in 1978, the Legislature passed SCA 28 (Proposition 7 of 1980) to allow a limited exclusion from the term 'new construction' for 'active solar systems' added by homeowners and businesses. The ballot materials clearly identified such systems as 'real property'; indeed, there would have been no need to amend the constitution had such systems not been improvements to real property. 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."

ASSEMBLY FLOOR: 56-12, 8/3/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Chau, Chen, Chiu, Cooley, Cooper, Daly, Eggman, Flora, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Mayes, McCarty, Medina, Mullin, Muratsuchi, O'Donnell, Petrie-Norris, Quirk, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Weber, Wood, Rendon

NOES: Bigelow, Brough, Choi, Megan Dahle, Fong, Kiley, Lackey, Mathis, Obernolte, Patterson, Quirk-Silva, Waldron

NO VOTE RECORDED: Cervantes, Chu, Cunningham, Diep, Frazier, Gray, Maienschein, Nazarian, Ramos, Voepel, Wicks

Prepared by: Colin Grinnell / GOV. & F. / (916) 651-4119
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