SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 1206 (Bennett) - Property taxation: affordable housing: welfare exemption

Version: January 24, 2022
Urgency: No
Hearing Date: August 1, 2022

Policy Vote: GOV. & F. 5 - 0
Mandate: Yes
Consultant: Robert Ingenito

Bill Summary: AB 1206 would, for property that meets the requirements of the property tax welfare exemption and is used exclusively for rental housing, require that such properties would continue to be treated as occupied by a lower income household, as specified.

Fiscal Impact:

- The Board of Equalization (BOE) indicates that it would incur minor and absorbable administrative costs to update claim forms, the Assessors Handbook, and Publication 149: Property Tax Welfare Exemption.

- BOE indicates that this bill would result in lower property taxes relative to current law; however, the magnitude of the decline is unknown. Lower local property tax revenues lead to increased General Fund Proposition 98 spending by up to roughly 50 percent (the exact amount depends on the specific amount of the annual Proposition 98 guarantee, which in turns depends upon a variety of economic, demographic and budgetary factors).

- By changing the manner in which assessors value real property, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). The magnitude of these costs is unknown.

Background: Under the California Constitution, all property is taxable unless explicitly exempted by the Constitution or federal law. In addition, the Constitution permits the Legislature to exempt property used exclusively for charitable purposes so long as it is owned by non-profit entities organized and operated for charitable purposes, such as universities, hospitals, and libraries (commonly referred to as the “welfare exemption”).

The welfare exemption includes property used for rental housing, if it meets several requirements, including that there is an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project’s usage, and provides that the units designated for use by lower income households are continuously available to or occupied by lower income households. For projects with both low-income and market rate units, the owner can claim a partial exemption, equal to that percentage of the value of the property equal to the percentage that the number of units serving lower income households represents of the total number of residential units. To claim an exemption, property owners must annually file

a claim with the assessor to receive the exemption, stating the number of units serving low-income households, including vacant units, and a list of qualified households. To qualify, the property owner must obtain a signed statement from each household certifying that the family household income did not exceed the income limits for that year. The welfare exemption relies on the definition for "lower income households" in the Health and Safety Code, which links to qualifying limits for lower income families under Section 8 of the United States Housing Act of 1937.

Current state law allows taxpayers who provide project capital to low-income rental housing projects to claim Low Income Housing Tax Credits (LIHTCs) against the Personal Income Tax, Corporation Tax, and Gross Premiums Tax. State LIHTCs are calculated in partial conformity with their federal counterparts, although the credit rates and durations differ. The state does conform to federal law with respect to setting the requirements determining whether a rental housing project is eligible for LIHTCs, including setting specified percentages of units that must be occupied by persons of certain percentages of area median income (AMI), as defined.

Federal LIHTC law states that a low-income unit will continue to be treated as a low-income unit, and therefore qualify investors to claim an LIHTC, if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Federal law further provides that if an occupant's income exceeds 140% of federal law's income limitations, then the next available unit of a comparable or smaller size must be rented to a low-income tenant. If not, the unit occupied by the household over the 140% threshold ceases to be treated as a low-income unit.

Because the welfare exemption claim for a rental housing unit depends on its occupant's annual income, the property owner can lose an exemption for a unit when its occupant's income increases beyond specified levels. In response, the Legislature enacted AB 1193 (Gloria, 2018), which expanded eligibility of the welfare exemption from property tax for property owners of units occupied by individuals who meet income limits when they begin occupying a unit, but whose income subsequently increases.

AB 1193 also required property owners claiming an exemption under the bill to submit a confidential affidavit containing a list of all units for which the exemption is claimed, that will continue to be treated as low-income units under the bill, as well as specified non-personally identifiable information, including unit name or number, actual household income of the unit's occupants, maximum rent for the unit, and actual rent charged.

However, AB 1193 only applies to property owners qualifying for the welfare exemption because their projects are eligible for and have received LIHTCs, meaning that other properties used for rental housing, such as community land trusts (CLTs) that qualify for the welfare exemption could lose the exemption or have it reduced when the incomes of individuals occupying exempt units increase.

CLTs are formed by local agencies, employers, nonprofits, or grassroots organizations, and are typically non-profit organizations that seek to promote affordable housing by acquiring and retaining ownership of real property in a specific geographic area using capital or land from private donations or public sources. Nearly 200 CLTs exist nationwide, about 20 of which are in California. CLTs mostly operate in higher-income urban and suburban areas, and under federal law, must (1) not be sponsored by a for-

profit organization, (2) be established to acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases; transfer ownership of any structural improvements located on such leased parcels to the lessees; and retain a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity; and (3) have corporate membership that is open to any adult resident of a particular geographic area specified in the bylaws of the organization; and whose board of directors must be equally comprised of leaseholders, community representatives, and other individuals representing the public interest. CLTs provide both owner-occupied and rental housing.

Proposed Law: This bill would, for 2022-23 through 2027-28, among other things provide that, for the purposes of the welfare exemption from property tax for property used for rental housing, that a unit continue to be treated as occupied by a lower income household when the income of those occupants increases up to 140% of AMI if: (1) the owner is a CLT, (2) the property is leased to a low-income household pursuant to a contract that meets the requirements in existing law that direct assessors to consider the value impact of the CLT enforceable restriction, and (3) the unit continues to be rent-restricted.

Under the bill, the unit would cease to be treated as a lower income unit if the occupants' income increases above 140% of AMI, adjusted for family size. The measure also would extend to CLTs claiming an exemption under the bill the annual reporting requirements on property owners added by AB 1193 for LIHTC properties.

Staff Comments: BOE notes that its staff cannot estimate the number of CLTs that would qualify under this bill. Staff also does not know the location and value of those properties. The revenue loss from the bill would depend on (1) the number of properties that would qualify, (2) the taxable value of the properties, and (3) the location of these properties. At this time, based on these unknown factors, the revenue loss is indeterminable.

Any local government costs resulting from the non-assessor mandates in this measure are not state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

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