

Date of Hearing: April 4, 2022

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Jacqui Irwin, Chair

AB 1933 (Friedman) – As Introduced February 10, 2022

FOR TESTIMONY ONLY

Majority vote. Tax levy. Fiscal committee.

SUBJECT: Property taxation: welfare exemption: nonprofit corporation: low- and moderate-income families

SUMMARY: Expands the property tax welfare exemption to eligible nonprofit corporations that sell affordable housing units, subject to certain limitations, to low- or moderate-income families, as defined. Specifically, **this bill:**

- 1) Expands the property tax welfare exemption under existing law to nonprofit corporations that would otherwise qualify for the exemption, if the nonprofit corporation is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residential units and if the units are subject to a 45-year recorded agreement with the appropriate local agency that requires all of the following:
 - a) All units shall be sold only to and purchased only by "first-time homebuyers" that are "low- or moderate-income families";
 - b) All purchases from the eligible nonprofit corporation must include a provision that provides the nonprofit corporation the first right to repurchase the home when the occupants are prepared to sell the unit and that requires the eligible nonprofit corporation, if it repurchases the home, to rerecord a deed that meets the requirements of this bill against the property;
 - c) The initial down payment on the units must be 5% or less of the market value of the units at the time of purchase; and,
 - d) The units must be made at an affordable housing cost to eligible buyers.
- 2) Provides an exemption for units that qualify under this bill but are part of a mixed-income development where a portion of the units may be available to "above-moderate income families."
- 3) Prohibits the denial of this bill's exemption on the basis that the property does not currently include, or is in the course of construction of, a single or multifamily residential unit that qualifies under the requirements of this bill, provided that the property was not previously designated as open space.
- 4) Finds and declares that:

- a) The exempt activities of a nonprofit corporation eligible for the exemption in this bill qualitatively differ from the exempt activities of other nonprofit entities that provide housing in that the exempt purpose described in this bill is to make housing, and the land reasonably necessary for that housing, available for a prompt sale to low- or moderate-income residents;
 - b) The holding of real property for the purposes of future construction of a single or multifamily residence on that property by a nonprofit corporation eligible for this bill's exemption is central to that nonprofit corporation's exempt purposes and activities; and,
 - c) The holding of real property for the future construction of a single or multifamily residence on that property by a nonprofit corporation eligible for this bill's exemption constitutes the exclusive use of that property for a charitable purpose, as provided in existing law.
- 5) Defines "above moderate-income families" as persons and families whose income does not exceed 150% of the area median income (AMI).
 - 6) Specifies that "affordable housing cost" may not exceed 30% of gross income (GI) for low-income families and 35% of GI for moderate-income families.
 - 7) Defines a "first-time homebuyer" as an individual and their spouse who have not owned a home during the three-year period prior to purchase of a home with assistance under the federal American Dream Downpayment Initiative (ADDI), among other qualifications.
 - 8) Defines "low-income or moderate-income families" as "persons and families of low or moderate income" is defined in Health and Safety Code Section 50093.
 - 9) Requires a nonprofit corporation utilizing this bill's exemption to be subject to an annual independent audit to ensure that the buyers of the units meet the requirements of this bill. Mandates that the nonprofit corporation make the audit available upon request to the city, county, and county assessor where the unit is located and to the Department of Housing and Community Development.
 - 10) Requires reimbursement to local agencies and school districts should the Commission on State Mandates determine that this bill contains costs mandated by the state.
 - 11) Provides, notwithstanding existing law, that no appropriation is made by this bill and the state shall not reimburse any local agency for any property tax revenues lost pursuant to this bill.
 - 12) Takes effect immediately as a tax levy.

EXISTING LAW:

- 1) Provides that all property is taxable, unless otherwise provided for by the State Constitution or the laws of the United States. Authorizes the Legislature to exempt from property taxation, in whole or in part, property used exclusively for religious, hospital, or charitable purposes owned or held in trust by eligible nonprofit corporations or other entities, which is commonly known as the "welfare exemption."

- 2) Implements the welfare exemption by including scientific purposes as an eligible purpose and exempts from taxation property that is owned by a nonprofit organization organized and operated for charitable purposes and used exclusively for those purposes.
- 3) Requires county assessors to consider certain enforceable restrictions when valuing land for the purposes of property taxation, including, but not limited to, contracts with a nonprofit corporation receiving the welfare exemption for properties intended to be sold to low-income families participating in a special no-interest loan, and contracts that are 99-year ground leases between a community land trust (CLT) and low- or moderate-income owner occupiers, as specified.
- 4) Provides that the Board of Equalization (BOE) and county assessors are responsible for administering the welfare exemption. Requires the BOE to determine if an entity seeking the exemption is organized and operated for an exempt purpose and the county assessors to evaluate whether the use of the property is eligible for the exemption. Allows a county assessor to deny the exemption, regardless of certification of the entity by the BOE.
- 5) Generally exempts property that is used exclusively for low-income rental housing and is owned and operated by an eligible nonprofit corporation, subject to certain requirements, including that the property be subject to a legal restriction requiring that units eligible for the exemption be continuously available or occupied by lower-income households, at rents less than certain limits. Specifies that a unit is no longer considered a lower income unit if the income of the occupants increases above 140% of AMI.
- 6) Exempts property owned and operated by nonprofit corporations that would otherwise qualify for the welfare exemption and that is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residences for sale at cost to low-income families, with financing in the form of a zero interest rate loan and without regard to religion, race, national origin, or the sex of the head of household. Provides that the exemption may not be denied to a property on the basis that the property does not currently include, or is in the course of construction of, a single or multifamily residence. Finds and declares that the exempt activities of a nonprofit corporation building or rehabilitating residences for sale to low-income families constitute the exclusive use of that property for charitable purposes eligible for the welfare exemption.
- 7) Generally defines "persons and families of low or moderate income" as persons and families whose income does not exceed 120 percent of AMI and includes very low- and extremely low-income households.
- 8) Enacts the National Affordable Housing Act (NAHA), which establishes the HOME Investment Partnership (HOME) Program to support affordable home-ownership within the HOME Program. Establishes, pursuant to the American Dream Downpayment Act (ADDA), the ADDI within the HOME Program to assist low-income, first-time homebuyers in their purchase of a home.

FISCAL EFFECT: According to the BOE, the revenue impact of this bill is indeterminable.

COMMENTS:

- 1) The author has submitted the following statement in support of this bill:

California has a housing deficit of 180,000 housing units annually. Incentivizing non-profits to build single-family homes and encourage homeownership will lead to more houses, stable families, and safer communities. AB 1933 is also a measure that will pay for itself over time as the homeowners begin to pay property taxes, and the non-profit can use the exemption to build even more units.

2) Heritage Housing Partners, writing as sponsors of this bill, note:

It is difficult for Heritage Housing Partners (HHP) to build additional units because to date they have been denied a property tax welfare exemption by the state. This is largely due to a technicality; because the homebuyer under the HHP model is paying interest on a conventional mortgage instead of all financing going through a 0% interest loan originated by a non-profit, the welfare exemption is denied. This means HHP must front the property tax costs of development between when the land is purchased until the property is constructed and turned over to the family. This costs HHP thousands of dollars of additional property taxes per unit, resources that can go into providing more housing.

3) Committee Staff Comments:

- a) *Purpose of this bill:* The author's office and sponsor note that this bill is intended to address a perceived barrier in existing law. The current welfare exemption provided to nonprofit corporations that rehabilitate or construct housing for sale to low-income families requires that the housing be financed with a zero-interest rate loan. Some nonprofits depend on government subsidies and grants to fund most of their developments. Certain nonprofits take these subsidies and recast them as a zero-percent interest junior loan with a 35- to 40- year repayment, generally to finance the actual construction or rehabilitation of the residence on the property, and pair these loans with a conventional mortgage from a traditional lender. The junior loan is non-performing, meaning all principal and interest payments serve the traditional mortgage, which has resulted in county assessors denying the welfare exemption to entities that would otherwise qualify for the exemption, as the homebuyer is paying interest on a conventional mortgage. Upon sale of the property, the value of the property would be reassessed and property tax imposed upon the purchaser of the home. This bill would permit a welfare exemption for an eligible nonprofit organization on properties subject to a 45-year recorded agreement restricting the sale of the property to first-time, low- or moderate-income homebuyers and that is financed with a conventional mortgage, albeit at below-market interest rates.
- b) *Nonprofit organizations and undeveloped properties:* Nonprofit organizations seeking legislation to exempt their undeveloped properties from property tax is well-trodden territory before the Legislature.¹ Many nonprofit organizations own and pay taxes on such land (churches, hospitals, private universities). The courts have taken the view that constitutional provisions granting exemptions are to be construed strictly, but reasonably. In this regard, the constitution explicitly states in Article XIII, Section 5, that the welfare

¹ For example, see AB 2662 (2001-02); AB 783 (2003-04); AB 3074 (2003-04); AB 722 (2005-06); AB 1788 (2011-12) and AB 2818 (2015-16).

exemption applies in the case of "intended use" of otherwise welfare-exemption-eligible property only after the buildings are "under construction".

- c) *California housing shortage*: According to statistics published in a report by the Public Policy Institute of California, the state has underbuilt housing for years. The report estimates that, as of 2017, California has a backlog of around 2.3 million housing units. The state projects that an average of 180,000 new units are needed every year to keep pace with population growth². However, new permits have fluctuated between approximately 110,000 and 90,000 annually over the last five years.

The sponsors note that the underproduction of “starter” homes has led to a knock-on effect that reverberates into the rental market, increasing demand for more affordable units and crowding out lower income households. Data from the California Association of Realtors notes that only 42% of California first-time homebuyers can afford their first home purchase, compared to a national average of 67%. However, as the California Housing Partnership notes, 40,000 new units affordable to low-income households are needed in the state, annually. By authorizing the exemption for the rehabilitation and construction of residential property for sale to both low- and moderate-income families, this bill would not provide a differential incentive based on income category.

- d) *Housing for sale and the welfare exemption*: AB 1559 (Wiggins), Chapter 927, Statutes of 1999, added Revenue and Taxation Code (R&TC) Section 214.15, which expanded the welfare exemption by exempting from taxation property owned and operated by an eligible nonprofit corporation that would otherwise qualify for the exemption, if that property is used for the rehabilitation or construction of housing for the purposes of selling the property to a low-income homebuyer when the sale is financed with a zero-interest rate loan. This expansion created a land-banking "use" exception for a specific affordability model utilized by Habitat for Humanity (Habitat), which was authorized because Habitat was forced to decline subdivision lot donations due to its inability to carry the associated property tax liability. The sponsors of this bill state their financing model differs from that of Humanity, as the sponsors pair the 0% interest rate loan with a conventional mortgage. A BOE analysis notes that this bill would create a separate standard for applying the exemption to low-income housing and a new standard for moderate-income housing, which could increase the administrative and compliance burden and workload on county assessors to ensure the exemption is fairly and properly administered. The author and Committee may wish to address the considerations outlined by the BOE.
- e) *Previous welfare exemptions on for sale moderate-income housing*: AB 2818 (Chiu), Chapter 701, Statutes of 2016, required county assessors to consider a 99-year ground lease between a CLT and a low- or moderate-income, owner occupier when valuing real property for taxation purposes, among other requirements. Subsequently, SB 196 (Beall), Chapter 669, Statutes of 2019, codified the CLT model into the welfare exemption, limited the exemption for a period of five years, and provided for recapture of property tax revenues by the local jurisdiction should the CLT fail to develop the property. CLTs use an affordability model which differs from others in that affordability restrictions are

² PPIC, *Housing*, <https://www.ppic.org/wp-content/uploads/californias-future-housing-january-2020.pdf>

effectively permanent. Low-income housing tax credits, for example, generally have affordability restrictions that expire. CLTs acquire and develop properties for sale to qualified households, but retain ownership of the underlying land and lease the land to the homebuyer for a nominal fee, making the purchase more affordable as the homeowner only buys the building and leases the land underneath. This bill would exempt property owned by an eligible nonprofit if that property is subject to a 45-year agreement that restricts sale of the property to moderate-income families, among others requirements. The Committee may wish to consider whether it is appropriate to exempt for sale moderate-income housing that would not effectively remain permanently affordable.

- f) *Treatment of certain properties:* This bill would exempt from taxation property that does not yet include a single- or multi-family residence as long as it was not restricted to use as open space. Unlike SB 196's expansion of the exemption to sales by a CLT to a moderate-income homebuyer, this bill fails to address the circumstance in which a nonprofit corporation does not expeditiously construct or rehabilitate housing eligible under this bill. Should the nonprofit corporation fail to construct or rehabilitate housing, after what period would the nonprofit no longer be entitled to this bill's exemption?

Additionally, assuming the developer meets the requirements of the welfare exemption and plans to build 100% housing qualifying for this bill's exemption on the property, then the county assessor would authorize a 100% exemption for the underlying land of that property. This bill does partially exempt units that are a part of a larger, mixed-income development containing "above-moderate income" units. However, as a BOE analysis notes, should the developer build housing which does not qualify for the exemption, this bill does not specify how the exemption should be applied to the underlying land. Would the developer be entitled to a 100% exemption on the land, or would the county assessor have to prorate the land's exemption and offer escape assessments on the portions of the property that do not qualify for the exemption?

The author and Committee may wish to amend this bill to address these uncertainties.

- g) *American Dream Downpayment Initiative:* In 1990, the NAHA was signed into law. The NAHA was intended to bolster national affordable housing programs and to reaffirm the federal government's commitment to affordable development, including the HOME Program. Subsequently, the ADDA was authorized in 2003, which established the ADDI in the HOME Program. The ADDI was intended to help first-time homebuyers purchase a home through allocating funds by formula to state and local governments to provide low-income households with assistance for downpayment and closing costs, and for rehabilitation work related with a home purchase. However, in 2008, the program was discontinued. This bill uses a definition for a "first-time homebuyer" that requires a purchaser to not have received a payment from the ADDI program in the last three years. Given the ADDI has been discontinued, this definition could conceivably allow any homebuyer that would otherwise qualify under this bill to be considered a "first-time homebuyer." If this is not the intent, the author may wish to amend the definition of "first-time homebuyer."
- h) *What is a "tax expenditure"?* Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, United

States Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each of them (in the form of forgone revenues). This bill would expand the property tax welfare exemption to specified nonprofit corporations engaged in rehabilitating or constructing housing units for low- and moderate-income families, among other requirements.

- i) *Committee's tax expenditure policy:* SB 1335 (Leno), Chapter 845, Statutes of 2014, added R&TC Section 41, which recognized that the Legislature should apply the same level of review used for government spending programs to tax credits introduced on or after January 1, 2015. AB 263 (Burke), Chapter 743, Statutes of 2019, extended the requirements in R&TC Section 41 to all tax expenditure measures under the Personal Income Tax Law, the Corporation Tax Law, and the Sales and Use Tax Law introduced on or after January 1, 2020. A tax expenditure proposal must outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote³. Sunsets are required because eliminating a tax expenditure generally requires a two-thirds vote. These requirements must be satisfied before a bill can receive a vote in this Committee. This bill does not comply with Section 41 requirements and does not include a five-year sunset.
- j) *Previous legislation:*
 - i) AB 196 (Beall), Chapter 669, Statutes of 2019, expanded the welfare exemption to CLTs that rehabilitate or construct certain residential property for sale to low- or moderate-income families, among other provisions.
 - ii) AB 2818 (Chiu), Chapter 701, Statutes of 2016, required assessors, when valuing real property for the purposes of property taxation, to consider a 99-year ground lease between a CLT and a low- or moderate-income owner-occupier, as specified.
 - iii) AB 1559 (Wiggins), Chapter 927, Statutes of 1999, expanded the welfare exemption to nonprofit corporations rehabilitating or constructing housing units for sale at cost to low-income homebuyers that finance the purchase with a zero-interest rate loan, among other requirements.

REGISTERED SUPPORT / OPPOSITION:

Support

Heritage Housing Partners (Sponsor)
California Catholic Conference
Habitat for Humanity, California

³ An "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean 10 years.

Opposition

None on file

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