Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 1933
Author: Friedman (D)
Amended: 6/28/22 in Senate
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 6/22/22
AYES: Caballero, Nielsen, Durazo, Hertzberg, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/11/22
AYES: Portantino, Bates, Bradford, Jones, Laird, McGuire, Wieckowski

ASSEMBLY FLOOR: 76-0, 5/26/22 - See last page for vote

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

SOURCE: Heritage Housing Partners

DIGEST: This bill adds a new welfare exemption from property tax for charitable organizations that develop affordable housing subject to a recorded agreement with a local agency.

ANALYSIS:

Existing law:

1) Provides that all property is taxable unless explicitly exempted by the Constitution or federal law (California Constitution, Article XIII, Section One).

2) Allows 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, known as the "welfare exemption" (California Constitution, Article XIII, Section Four).

3) Exempts from taxation buildings under construction, land required for its convenient use, and equipment in the building if its intended use qualifies for the exemption, for several Constitutional exempt purposes, including the welfare exemption (California Constitution, Article XIII, Section Five).

4) Allows the welfare exemption, and applies it to property used for rental housing when:

   a) Tax-exempt mortgage revenue bonds; general obligation bonds; federal, state, or local grants; or federal low-income housing tax credits finance the housing,

   b) The property is enforceably restricted for low-income housing, and rents do not exceed those prescribed in deed restrictions, and

   c) The property owner certifies that funds that would have been used to pay property taxes are used to maintain the affordability of the units or reduce rents.

5) Provides that the exemption for rental housing is 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.

6) Enacts the "Habitat for Humanity" exemption, which allows the welfare exemption to also apply to property:

   a) Owned and operated by a nonprofit corporation, which 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, and

   b) The sale of which is financed by a zero interest rate loan and without regard to religion, race, national origin, or the sex of the head of household.

7) Authorizes the Community Land Trust (CLT) welfare exemption applies to property owned by a community land trust, under the following circumstances (SB 196, Beall, Chapter 669, Statutes of 2019):

   a) The property is being or will be developed or rehabilitated as an owner-occupied single-family dwelling, unit in a multifamily dwelling, a member-occupied unit in a limited equity housing cooperative, or as a rental housing development.

b) Improvements on the property are or will be available for use and ownership or for rent by persons and families of low or moderate income, including persons and families of low or moderate income that own a dwelling or unit collectively as member occupants or resident shareholders of a limited equity housing cooperative.

c) A deed restriction or other instrument, requiring a contract or contracts serving as an enforceable restriction on the sale or resale value of owner-occupied units or on the affordability of rental units is recorded on or before the lien date following the acquisition of the property by the community land trust.

This bill:

1) Allows an organization otherwise eligible to claim the welfare exemption from property tax that is organized and operated for the specific and primary purpose of building and rehabilitating single or multifamily residential units to claim the exemption for property that is subject to a 45-year recorded agreement with the appropriate local agency and the agreement requires:

   a) Some or all of the property's units are owner-occupied and sold only to and purchased by first-time homebuyers that are low-income families, as defined.

   b) The initial down payment on the units is 5 percent or less of the market value of the unit at the time of purchase.

   c) The unit is made available at an affordable housing cost to buyers, defined as a cost that does not exceed 30 percent of gross income.

2) Provides that the exemption can apply when related to a larger, mixed-income development project where a portion of the units may be available to persons or families that are not low-income families, but only the units that meet the above requirements qualify the organization for the exemption.

3) Requires the assessor to adjust the exemption by a proration factor that reflects the portion of the property proposed to be built or rehabilitated with units that meet the requirements of the exemption as a percentage of the total development.

4) Directs the assessor to assess as escaped property any property for which a welfare exemption was granted if construction is abandoned, or upon

completion of construction, the property does not meet the requirements for the exemption.

5) Makes the organization who received the exemption liable for taxes in previous years if the property is not developed or rehabilitated, or in the course of construction, within a specified period. Organizations have until January 1, 2028 to do so for property it acquires before January 1, 2023; for property acquired after that date, the organization must commence construction within five lien dates.

6) Similar to the Habitat for Humanity and CLT exemptions, provides that the assessor cannot deny an open space property the exemption on the basis that the property does not currently include a single or multifamily residential unit, or a single or multifamily residential unit that is in the course of construction.

7) Makes legislative findings and declarations that the organization's use of the property constitutes exclusive use for purposes of the Constitutional welfare exemption.

8) Requires the nonprofit corporation claiming an exemption under the bill to be subject to an annual independent audit to ensure that the buyers of the units meet the bill's requirements, which must be made available upon request to the city, county, and county assessor where the unit is located and to the Department of Housing and Community Development, to maintain eligibility for the exemption.

9) Requires an office of the nonprofit corporation making a claim for the exemption to sign an affidavit under penalty of perjury that the property owned and operated by the nonprofit corporation is for the future construction of single or multifamily residential units on that property.

10) Makes the measure operative for lien dates on or after January 1, 2023 to January 1, 2028, and sunsets after January 1, 2034.

11) Defines several terms, and makes legislative findings and declarations supporting its purposes.

Background

The Habitat for Humanity and CLT welfare exemptions from property tax apply to very specific models for developing affordable housing, so do not include other potential ways of doing so. Heritage Housing Partners (HHP) is a 501(c)(3) non-profit that builds and sells affordable units to very low, low, and moderate income, first-time homebuyers in the Los Angeles Area. Prospective homebuyers procure a first mortgage on their own, and then HHP uses public sector subsidies to pay the difference between the full cost of development and its "affordable sales price," an amount determined for each unit that ensures the typical buyer does not spend more than 35% of his or her monthly total income on housing expense. The homebuyer must make a down payment of around 5% and pay closing costs of 3%. At sale, the public sector subsidy is recast as a non-performing, zero interest junior loan with a 30-45 year repayment to the homebuyer. The homebuyer only pays principal and interest payments on the conventional first mortgage; however, because the home can only be sold to another income-qualified, first-time homebuyer, any gain is limited to the gain in the "affordable sales price" between purchase and sale. Because the Habitat for Humanity exemption requires a zero interest rate loan, and HHP homebuyers obtain a conventional one, their projects do not qualify for an exemption. Neither do they qualify for the CLT exemption because HHP is not a CLT.

Comments

The welfare exemption has two explicit Constitutional requirements: the property must be owned by charitable organizations, and used exclusively for exempt purposes. The welfare exemption applies to many forms of properties, but generally requires the activity on the property to "benefit the community as a whole or an unascertainable and indefinite portion thereof." (*Stockton Civic Theatre v. Board of Supervisors* (1967) 66 Cal.2d. 13). However, it is unclear how vacant land can be considered to be used exclusively for a community benefit Many nonprofit organizations own and pay taxes on land they intend to develop for exempt purposes (churches, hospitals, private universities), which then become exempt when construction commences, while others have unsuccessfully sought similar exemptions in the Legislature in the past. Land that will be developed for affordable rental housing eligible for the welfare exemption is similarly taxable. Given the state's general shortage of housing, and acute shortage of affordable housing, AB 1933 justifies its exemption for vacant land by stating that the activities of the organization qualifying for its exemption qualitatively differ from the exempt activities of other nonprofit entities that provide housing. The bill adds that the exempt purpose of these organizations is not to own and operate a housing project on an ongoing basis, but is instead to make housing, and the land reasonably necessary for the use of that housing, available for prompt sale to low-income residents. AB 1993's explanation is not without precedent – the Legislature adopted identical findings when it enacted the Habitat for Humanity exemption.

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

According to the Senate Appropriations Committee:

- 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 in the near-term, which would be more than offset by higher property tax revenues in the long run; however, the respective magnitudes are 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

SUPPORT: (Verified 8/12/22)

Heritage Housing Partners (source)
Black Leadership Council
Habitat for Humanity
Housing Action Coalition
Los Angeles County Assessor Jeffrey Prang

OPPOSITION: (Verified 8/17/22)

California Assessors' Association

ARGUMENTS IN SUPPORT: According to the author, "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 will make it easier for non-profit homebuilders to build affordable housing for individuals and families to purchase—not just rent. The bill would provide a full property tax exemption for properties that are developed into single- or multi-family units sold to lower-income households. Units would be sold to first-time homebuyers, defined as a person who has not had an ownership interest in a property in the last 3 years. The property owner must record a 45-year affordability covenant on the property. AB 1933 is 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."

ARGUMENTS IN OPPOSITION: According to the California Assessors' Association, "With this expansion there are three areas of concern to Assessors: The cost to low income families, the security of taxes if escapes are required, and the conflicting language for making corrections and the statute of limitations for Assessors to enroll those corrections. AB 1559 required that residences must be for sale to low-income families at cost, with a zero-interest rate loan financing. AB1933 should include a requirement of a sale at cost, with assurances of a zero or low interest rate loan to ensure the community benefit test is met before an exemption is granted. In the event that escapes are necessary, developers should be required to provide financial security for the exempted taxes based on the original value and adjusted by 2% per year. Finally, AB1933 states that Assessors' would be required to enroll escapes if a property is abandoned or not put to use within five years; however, it does not address the statute of limitations for enrolling such corrections as was done in SB 196."

ASSEMBLY FLOOR: 76-0, 5/26/22
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon
NO VOTE RECORDED: Berman, O'Donnell

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****** END ******