
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2021 - 2022 Regular

Bill No: SB 1456
Author: Stern
Version: 3/31/22
Consultant: Grinnell

Hearing Date: 4/20/22
Tax Levy: Yes
Fiscal: Yes

PROPERTY TAXATION: WELFARE EXEMPTION: LOW-INCOME HOUSING

Eliminates the statewide cap on the value of property used for non-publicly financed affordable housing.

Background

The California Constitution provides that all property is taxable unless explicitly exempted by the Constitution or federal law, but also 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. The Legislature enacted this exemption, commonly known as the “welfare exemption.” The welfare exemption has a similar policy genesis as tax-exempt status for charitable groups: revenues paid in tax to the government divert needed resources away from the organizations’ good works.

The welfare exemption includes property used for rental housing, if:

- Tax-exempt mortgage revenue bonds; general obligation bonds; federal, state, or local grants; or federal low-income housing tax credits finance the housing,
- The property is enforceably restricted for low-income housing, and rents do not exceed those prescribed in deed restrictions, and
- 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.

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.

Prior to 1999, rental housing owners could claim a welfare exemption from property tax for low-income housing if 20% of the property’s residents were low-income. After the Los Angeles Housing Project investigated some of the city’s worst housing projects, they discovered that tax-exempt property owners were not providing basic maintenance to housing that qualified them for the exemption from property tax. Responding to the investigation, the Legislature enacted AB 1559 (Wiggins, 1999), which repealed the occupancy test, instead requiring all owners to receive public financing in the forms listed above for the project to claim the welfare exemption, in addition to the above requirements. However, AB 1559 revoked the exemption for many worthy properties owned by charities that weren’t publicly financed, so the Legislature subsequently

enacted AB 659 (Wiggins, 2000), which again allowed an exemption for non-publicly financed rental housing property, subject to several requirements:

- 90% of the households occupying the housing must be low-income persons, whose rent does not exceed specified limits for low-income persons;
- The property is subject to a recorded deed restriction, regulatory agreement, or other legal document restricting the property's use to low-income housing.
- A cap in the exemption amount of \$20,000 in tax for all properties the taxpayer owns in the state; and
- A requirement that the property be managed solely by a charitable non-profit organization (specifically, excluding limited partnerships) to be eligible for the exemption.

Since 2000, the value of housing has increased, compelling some non-profits to pay taxes on amounts that exceeded the cap, and discouraging other groups from acquiring rental housing in the hopes of preserving existing affordable units in their areas. In response, the Legislature enacted SB 996 (Hill, 2016), which:

- Quintupled the cap, and revised it to instead apply to the property's value, not the tax paid, with the new threshold at \$10 million of assessed value;
- Created a process for taxpayers to file a claim to cancel any outstanding taxes or escape assessments due on values that exceeded the previous cap; and
- Required property owners claiming the welfare exemption to provide specified information regarding the household income of and the rent charged to an occupant of an exempt unit.

In 2018, the Legislature again increased the cap to \$20 million in value (SB 1115, Hill), and created a process for taxpayers to file a claim to have any outstanding taxes or escape assessments cancelled.

Charitable organizations that own and operate rental housing projects can claim the exemption up to the cap, but must pay tax on value above that amount, which deters them from purchasing more. The author wants to eliminate the cap to increase the supply of affordable housing.

Proposed Law

Senate Bill 1456 strikes the current \$20 million cap in assessed valuation in the welfare exemption for property tax for non-publicly financed affordable housing. The measure applies to lien dates on or after the effective date of the bill.

State Revenue Impact

According to the state Board of Equalization (BOE), "based on information provided by County Assessors, the current revenue impact is zero as it is unclear whether any organizations appear to be over or near the cap at the present time."

Comments

1. Purpose of the bill. According to the author, “There is an overwhelming need for more housing in California. According to the latest Regional Housing Needs Assessment (RHNA), the state will need 2.5 million new homes over the next 8 years to meet housing goals, with at least 1 million of that total to meet the needs for low-income housing. The National Low Income Housing Coalition estimates that the state is short more than 962,000 affordable homes for extremely low income renters. The lack of affordable housing has contributed to our homeless crisis, with more than 160,000 Californians living on the streets and millions more living one paycheck away from homelessness. Despite strong efforts by the Legislature and the Governor to meet our housing needs, we are still failing to achieve our housing goals. The state reports that we have built less than the number of units necessary to meet those goals. In order to reach the level of affordable housing development necessary to turn the situation around, we must embrace and maximize every affordable housing opportunity available to us. Currently, dozens of nonprofit affordable housing developers are working strenuously to respond to the affordable housing crisis. However, current law does not treat all developers the same. Nonprofit developers that use public funds such as tax credits or state or federal grants and loans are eligible for a 100% property tax exemption. A nonprofit developer that privately finances low income housing and uses no public funds is eligible for a property tax exemption up to a maximum of \$20 million in aggregate valuation. The irony is that the project that costs the state no money hits a permanent wall at \$20 million in assessed value while a project that can cost the state millions of dollars receives a property tax exemption up to 100% on an unlimited number of projects. SB 1456 seeks to level the playing field so that all nonprofit developers who are contributing to our affordable housing stock are treated the same.”

2. Do it again. SB 1456 is very similar to SB 219 (Hill, 2019). When the Committee approved SB 219 by a vote of 7 to 0 on March 27, 2019, it increased the cap from \$20 million to \$250 million, and also created a new partial exemption for property used for non-publicly financed rental housing where 50% or more of the occupants were low-income households. The exemption amount was prorated based on the percentage of occupants who were low income of the property’s total number of occupants. After the Senate approved the measure unanimously, the author amended the bill to reduce the cap increase from \$250 million to \$100 million, sunset the change after ten years, and create a process for cancelling of outstanding property taxes on property eligible for exemption under the bill. However, Governor Newsom vetoed the bill, stating:

To the Members of the California State Senate:

I am returning Senate Bill 294 without my signature.

This bill would revise the current property tax welfare exemption for nonprofits that own and operate non-publicly financed affordable housing developments by increasing the current exemption for nonprofits from \$20 million to \$100 million and reducing the current low-income tenancy threshold from 90 percent to 50 percent for ten years. The bill would also allow outstanding unpaid property tax bills to be reduced or potentially forgiven on qualified properties.

While well intended, and specific to certain nonprofit entities that provide affordable housing, this bill makes changes to the property tax welfare exemption that could have significant long-term General Fund costs and reduced local revenue. In addition to tax exemptions under current law, properties that are in need of assistance to maintain long-

term affordability have access to a range of state and local preservation financing programs.

Sustaining affordable housing in fiscally responsible manner for the long-term is a goal I share with the Legislature. Although this bill is not the solution, I am committed to working with the Legislature on bolstering existing programs and tailoring them to produce and preserve the State's much needed affordable housing stock.

Sincerely,

Gavin Newsom

SB 1456 does not include SB 219's new partial exemption, but does eliminate the cap that SB 219 merely increased. The Committee may wish to consider whether SB 1456's assistance for owners of affordable rental housing is worth its potential costs and reduced property tax revenue.

3. As time goes by. When the Legislature set the cap in 2000, it was part of a series of reforms that responded to an investigation that showed property owners claiming the exemption were not providing basic maintenance for its housing projects. Other reforms adopted as part of the package, such as making the exemption contingent upon deed restrictions binding rents, and limiting the exemption solely to non-profit organizations owning the units, should have chased out any potential bad actors over the past nineteen years. BOE monitors the statewide cap based on the annual welfare exemption filings it receives from county assessors. Based on reports from 19 counties, BOE states that there are 14 organizations statewide who claim the exemption under this part of the welfare exemption, and only one is around the \$20 million cap. The narrow application of the cap raises questions regarding its necessity. The Legislature already repealed the cap for the Long Beach Affordable Housing Coalition's purchase of specified properties in Los Angeles County (SB 1284, Lowenthal, 2008), and no other organizations claiming the welfare exemption are subject to a similar cap, such as publicly-financed rental housing, hospitals, and universities. Continuing the cap for these properties may no longer be necessary.

4. Information. When the Legislature quintupled the cap in 2015, it required any non-profit organization qualifying for the exemption to provide additional information with their annual claim. The measure required the non-profit organization to annually provide non-personally identifiable information about the occupants, which includes the actual household income of the occupant, the maximum rent that may be charged to the occupant, and the actual rent charged to the occupant. As a result, assessors now have more information to ensure that the welfare exemption from property tax for affordable housing is correctly administered.

5. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 1456 changes the manner in which assessors value real property, and creates a claim process, Legislative Counsel says that it imposes a new state mandate. The measure states that should the Commission on State Mandates determine that the bill imposes a reimbursable mandate, reimbursement must be made pursuant to existing statutory provisions. Additionally, the bill provides that the state shall not reimburse local agencies for any property tax revenue losses resulting from its expanded welfare exemption.

Support and Opposition (4/18/22)

Support:

Aids Healthcare Foundation
California Business Roundtable
California Catholic Conference
Coalition for Economic Survival (CES)
UNITE HERE! Local 11

Opposition:

None submitted

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