Date of Hearing: June 20, 2022

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Jacqui Irwin, Chair

SB 1456 (Stern) – As Amended March 31, 2022

FOR TESTIMONY ONLY

Majority vote. Tax levy. Fiscal committee.

SENATE VOTE: 39-0

SUBJECT: Property taxation: welfare exemption: low-income housing

SUMMARY: Eliminates the statewide cap on the value of a property under the welfare exemption from property tax for non-publicly financed affordable housing. Specifically, **this bill**:

1) Removes the $20 million limit on the total exemption amount for property tax lien dates occurring on and after this bill's effective date.

2) Provides that if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made as required under existing law.

3) Provide that, notwithstanding existing law requirements, this bill makes no appropriation, and the state shall not reimburse local agencies for property tax revenues lost by them under the bill.

4) Takes effect immediately as a tax levy.

EXISTING LAW:

1) Authorizes the Legislature to exempt from taxation, in whole or in part, property used exclusively for religious, hospital, or charitable purposes, as specified. (California Constitution Article XIII, Section 4(b).) The Legislature has implemented the "welfare exemption" under Revenue and Taxation Code (R&TC) Section 214.

2) Exempts low-income rental housing owned and operated by nonprofit organizations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, as specified. (R&TC Section 214(g).)

3) Grants a partial welfare exemption, equal to the percentage of units serving lower income households as defined in Health and Safety Code (H&SC) Section 50053, to property used exclusively for rental housing and operated by nonprofit organizations, as specified, under either of the following conditions:

a) The project is publicly financed with tax-exempt mortgage revenue bonds, general obligation bonds, grants, or low-income housing tax credits (LIHTCs); or,

b) In the case of non-publicly financed affordable rental housing, 90% of units are affordable for lower income households with the nonprofit organization limited to an exemption of $20 million in assessed value statewide. (R&TC Section 214.)

4) Requires organizations seeking the welfare exemption to do the following:

a) File an enforceable and verifiable agreement with a public agency or other restriction, as specified, that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households; and,

b) Certify that the funds that would have been used to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households. (R&TC Section 214(g).)

5) Requires, in the case of non-publicly financed low-income rental housing, a claim for the welfare exemption to be accompanied by a confidential affidavit, not subject to public disclosure, including a list of units occupied by lower income households for which the exemption is claimed, and the following non-personally identifiable information about the occupants:

a) The actual household income of the occupant;

b) The maximum rent that may be charged to the occupant; and,

c) The actual rent charged to the occupant. (R&TC Section 259.14).

FISCAL EFFECT: The Board of Equalization (BOE) indicates that, based on county assessor data, one organization could be over the $20 million current-law cap; BOE is clarifying that the data reported to it is accurate. Generally, this bill would lead to a revenue loss over time, as (1) assessed values of organizations' current holdings exceed $20 million over time (resulting from the annual inflation factor of up to 2 percent), and (2) to the extent organizations acquire or construct an additional property that would exceed the $20 million cap. 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 turn depends upon a variety of economic, demographic, and budgetary factors).

COMMENTS:

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

> 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) This bill is supported by the AIDS Healthcare Foundation (AHF), which notes, in part:

With a total value of over $120 million (funds the state did not need to spend on affordable housing), more than 90% of AHF's properties receive no property exemption. To date, AHF has been awarded a full exemption for one property valued at $4.6 million and a partial exemption on two properties, valued at $8 million and $15.2 million.

This dissonance in state law has an added impact on the project that does not use state funds: those units that do not benefit from the tax exemption cost the developer or the tenant more monthly. In AHF's properties, the additional cost per unit ranges from $90 to $160 per month. This cost is absorbed by AHF, but other projects potentially could add that cost to the rent.

AHF is not the only organization that is privately funding low-income housing. Kaiser Foundation is investing approximately $50 million in a low-income housing project in Los Angeles and could benefit from this policy change.

[…]

The cost benefit [of SB 1456] to the state is considerable. AHF is spending more on affordable housing projects and successfully serving a high priority objective of the state than the state and local governments would not receive in future property tax revenue. For every $1 million in unrealized property tax revenue, local jurisdictions and the state will benefit from $100 million worth of new affordable housing projects that cost government nothing.

3) Committee Staff Comments:

   a) *What would this bill do*? This bill amends Revenue and Taxation Code (R&TC) Section 214 to remove the welfare exemption cap of $20 million in aggregate assessed value that qualified nonprofit organizations may receive after the effective date of this bill.

   b) *Who would potentially benefit from this bill*? This bill would benefit qualified nonprofit organizations that own privately financed low-income rental housing properties above the cap. BOE notes that it did not receive enough data to determine precisely how many organizations would qualify for the exemption allowed by this bill.

      However, AHF, a supporter of this bill, notes that AHF and Kaiser Health Foundation could be potential beneficiaries of this bill. For example, suppose AHF holds qualified properties and the total assessed value of those properties statewide is $100 million over the current cap. In that case, AHF could realize a property tax savings of approximately $1 million annually from this bill.

   c) *What is the problem this bill is seeking to solve*? According to the author, California is failing to build enough affordable homes for lower income residents because the state lacks an effective approach to planning and financing affordable housing development at both the state and local levels. Specifically, the author states that publically offered options for affordable housing are limited, and new units are not being built nearly fast enough to meet demand: 1,271,125 homes, or 21% of renter households in California, are considered extremely low income.

   d) *Rewards existing development*: Under this bill, the removal of the cap is effective for property tax lien dates occurring on and after the bill's effective date for any qualified properties. In other words, this bill allows qualified nonprofit organizations with affordable housing properties above the $20 million cap to receive an immediate tax break on their existing properties. However, this result could be problematic because this bill does not necessarily incentivize new development.

      For example, a qualified nonprofit organization could receive the property tax exemption benefits from this bill on their existing properties and spend those tax savings on other expenditures instead of building more affordable housing developments. Therefore, this bill may not assure that the "unlimited" tax exemption provided in this bill will incentivize the new development of affordable housing.

   e) *AB 2651 of the current Legislative Session*: The members of this Committee unanimously voted for AB 2651 (Petrie-Norris), which extended the sunset date of the property tax welfare exemption for community land trusts (CLTs). This Committee was assured that the CLT exemption in the bill would likely incentivize new development because the bill required CLTs to be liable for property taxes if the property was not developed or rehabilitated or if the development or rehabilitation was not in the course of construction, within a specified timeframe.

      A similar contingency or an amendment that applies the removal of the cap only for new development would likely convey to the Committee that this bill will actually encourage more affordable housing development. Should the author wish to ensure that this bill incentivizes new development, Committee staff can offer assistance with amending this bill.

f) *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. This Committee has also adopted a policy, requiring that all tax expenditure proposals, including property tax exemptions, must comply with the requirements of R&TC Section 41. 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. A tax expenditure bill will not be eligible for a Committee vote unless it has complied with these requirements. This bill does not arguably comply with R&TC Section 41.

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 vote. According to the policy, an "appropriate sunset provision" means five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" means 10 years. This bill does not comply with the sunset requirement.

The author's office indicated that they are working on amendments to comply with the R&TC Section 41 requirements and sunset policy.

g) *Prior legislation*:

i) AB 2063 (Mullin), of the 2019-20 Legislative Session, would have increased the welfare exemption cap from $20 million to $100 million in assessed value and decreased the minimum occupancy threshold from 90% to 50% that applies to certain low-income rental housing owned and operated by a non-profit organization that does not receive government financing or tax credits. AB 2063 was held in this Committee for reasons related to the COVID-19 pandemic limitations.

ii) SB 294 (Hill), of the 2019-20 Legislative Session, would have allowed for a partial welfare exemption from property tax for non-publicly financed affordable housing, and increased the statewide cap on the value of property used for non-publicly financed affordable housing. SB 294 was vetoed. The Governor stated in his veto message:

> To the Members of the California State Senate:
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> I am returning Senate Bill 294 without my signature.
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> 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 a 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.

iii) SB 1115 (Hill), Chapter 694, Statutes of 2018, increased the exemption cap from $10 million to $20 million.

iv) SB 996 (Hill), Chapter 836, Statutes of 2016, effectively increased the cap from $2 million in assessed value ($20,000 in tax) to $10 million in assessed value ($100,000 in tax) and transitioned the measure of the cap from tax dollars to assessed value for administrative ease.

v) SB 1284 (Lowenthal), Chapter 524, Statutes of 2008, excluded from the welfare exemption cap specified affordable housing properties acquired by a nonprofit organization in Long Beach as a result of mitigation efforts from the construction of the Century Freeway (I-105) in Los Angeles County.

vi) AB 659 (Wiggins), Chapter 601, Statutes of 2000, reinstated welfare exemption-eligibility for non-publicly financed low-income rental housing (excluding LPs) and created the welfare exemption cap applicable to this rental housing and established the 90% occupancy threshold.

vii) AB 1559 (Wiggins), Chapter 927, Statutes of 1999, revoked the welfare exemption eligibility from low-income housing if it did not receive government financial assistance. AB 1559 also imposed higher documentation standards to substantiate that a rental property is dedicated to low-income housing.

REGISTERED SUPPORT / OPPOSITION:

Support

AIDS Healthcare Foundation
City of Beverly Hills
California Business Roundtable
California Catholic Conference
Unite Here Local 11

Opposition

None on file

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