
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2023 - 2024 Regular

Bill No: SB 584
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Tax Levy: No
Fiscal: Yes

LABORFORCE HOUSING

Requires the Department of Housing and Community Development (HCD) to collect an assessment from those who rent property for less than 30 days, and allocate the proceeds for the construction, acquisition and rehabilitation of laborforce housing.

Background

California’s housing challenges. California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes have contributed to the lack of housing production. Recent reports by the Legislative Analyst’s Office (LAO) and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members who may not want new neighbors. The building industry also points to California Environmental Quality Act (CEQA) review, and housing advocates note a lack of a dedicated source of funds for affordable housing.

Transient occupancy taxes. State law allows cities and counties to levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home, motel or other lodging unless the occupancy is for a period of more than 30 days. These taxes – commonly known as Transient Occupancy Taxes or TOTs – are typically collected by lodging providers as an itemized charge based on a percentage of a customer’s bill, who then remit proceeds to the local agency where the lodging was provided. In California, 431 cities and 54 counties levy a TOT, mostly for general revenue purposes, at rates from 3% to over 14%. According to the State Controller’s Office, TOTs generated more than \$2.6 billion in revenue for local agencies in the 2017-18 fiscal year, which fell to about \$1.6 billion in 2020-21. The state does not currently impose its own TOT.

Short-term rentals. In recent years, Internet-based platforms like Homeaway, VRBO and Airbnb have facilitated increasing numbers of short-term rentals of homes and rooms within residences. Short-term rentals, also known as vacation-rentals, are usually an individual’s residential property, such as a home, room, apartment, or condominium they rent out to a visitor for fewer than 30 consecutive days. Generally, the home sharing industry involves three primary participants: (1) the home sharing platforms, such as Airbnb, that advertises residential properties offered for temporary rental and facilitates connecting renters with hosts for a fee, and process payment for the rental, (2) the consumer who is often referred to as the “renter” “guest,” or “visitor” of the residential property, and (3) the supplier, owner, operator, or “host” of the

residential property. Short-term rentals are not a new practice, but the development of online hosting platforms, bookings, advertisements, and payments has increased.

Seeking to provide an ongoing revenue source to construct affordable housing units, the State Building and Construction Trades Council wants to impose an assessment on operators and facilitators of short-term occupancy in residential property to pay for the creation of laborforce housing.

Proposed Law

Senate Bill 584 enacts the Laborforce Housing Financing Act of 2023, which:

- Imposes a laborforce housing assessment on those who receive payments for transient occupancy in a residential property.
- Creates the Laborforce Housing Fund in the State Treasury, where revenues from the assessment are deposited, and out of which the Department of Housing and Community Development (HCD) allocates funds to create laborforce housing.
- Sets labor standards for laborforce housing.
- Establishes tenant protections for tenants in laborforce housing.

Laborforce housing assessments. SB 584 imposes an assessment of an unspecified percentage on each payment of rent made by a person for transient occupancy in a residential property, as defined. The bill provides that the operator of the residential property and any transient occupancy business, as defined, that facilitates the transaction are jointly and severally liable for the assessment. The measure explicitly excludes a hotel, inn, motel, bed and breakfast, or similar business from the assessment, and rental arrangements longer than 30 consecutive calendar days.

The assessment applies to payments made on or after January 1, 2024, and in addition to any local tax, fee, or other assessment. Operators or transient occupancy businesses must pay the assessment to HCD no later than 90 days after the rent is received.

The measure provides that the laborforce housing assessment constitutes a debt owed to HCD, which is extinguished only upon payment by either the operator or any transient occupancy business. The bill requires any operator and transient occupancy business to keep and preserve, for at least four years from the date of the rental, records sufficient to enable HCD to determine the existence and amount of any assessments owed. SB 584 applies a timely payment penalty of 10 percent of the unpaid amount plus interest at the rate of 10 percent per year.

The bill allows HCD to file suit in any jurisdiction in which any part of the rent from which the total debt owed arises, against an operator or transient occupancy business, or both, that has failed to pay any laborforce housing assessment, including any penalty or interest owed within four years of the date on which any unpaid laborforce housing assessment was due. The measure allows multiple unpaid laborforce housing assessments to be recovered in a single suit.

The Laborforce Housing Fund. SB 584 creates the Laborforce Housing Fund, consisting solely of revenues from the bill's assessments, and continuously appropriates proceeds to HCD without regard to fiscal years. The bill directs HCD to allocate proceeds to the creation of laborforce housing, defined as housing that meets all the following requirements:

- A public entity, a local housing authority, a community land trust, or a non-profit, as specified, own and manage the housing units.
- Each development contains units that accommodate a mix of housing of household income ranges at or below moderate income. All units shall be permanently deed-restricted affordable to households at each of those income levels to ensure that every household pays an affordable rent.
- Residents shall enjoy specified tenant protections outlined below.
- The housing units are protected for the duration of their useful life, and the land associated with the housing units is protected permanently from being sold or transferred to any person or for-profit or public-private partnership.
- Residents have the right to participate directly and meaningfully in decision-making affecting the operation and management of the housing units in which they reside.

The bill allows public entities, local housing authorities, and nonprofit housing providers to receive funding from the fund, and HCD to use any funds for administration purposes. SB 584 divides funding in the following ways:

- 65% of the funds allocated must create laborforce housing through new construction.
- 30% of the funds allocated must create laborforce housing through the acquisition and rehabilitation of existing housing.
- 5% of the funds must be used to meet the operating needs of projects and for planning and implementation of local housing or renter protection programs.

HCD must establish an application process and have discretion to allocate funding in the manner HCD determines will best effectuate this bill, and endeavor, to the extent feasible, to award funds to projects in the counties in which the funds were collected.

Labor standards. SB 584 restricts funds allocated by HCD from the Fund for construction or rehabilitation work on a project only if:

- All construction and rehabilitation work is subject to a project labor agreement that requires payments of at least the applicable prevailing wage rate to all construction workers on the project.
- HCD or a local public agency has obtained an enforceable commitment from the prime contractor or other entity undertaking the work that all contractors and subcontractors at every tier will use a skilled and trained workforce to complete the project.

Tenant protections. SB 584 requires all of the following protections to apply to tenants in a property funded by HCD with its assessments:

- Tenants shall be protected from termination or eviction except for just cause, as specified.
- A tenant who qualifies at the time of the creation of the tenancy shall not be terminated solely on the basis of a subsequent change in income.
- No household or member of a household that resides in the property at the time of its acquisition shall be evicted, nor shall their tenancy be terminated on the ground of their income or other eligibility requirements for deed-restricted units in the property.
- The maximum allowable rent increase for any unit shall not exceed the lesser of 3% of the rent or 6% of the California Consumer Price Index.

- No tenant in a property acquired with funding by this bill shall be deprived of any rights or protections under state or local law that they enjoyed prior to the time of its acquisition. Tenants shall enjoy full rights of association and free speech including the right to organize tenant unions and shall be protected from any act of discrimination, harassment, or retaliation.

Other provisions. SB 584 requires HCD to adopt rules, policies, guidelines, or standards to implement, none of which are subject to the Administrative Procedures Act. The measure defines several terms, and contains legislative findings and declarations supporting its purposes, as well as an urgency clause.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, “SB 584 creates a state program to finance publicly owned housing and addresses our housing crisis by developing homes for the benefit of middle and low-income Californians. This bill creates a statewide assessment on the commercial use of residential homes and apartments for short-term vacation rentals. The grant funds will be distributed to counties proportionate to the amount collected in the local jurisdiction to be used by public entities and local housing authorities to pay for the costs of construction and rehabilitation of affordable housing.”

2. Sure, but will it work? SB 584 imposes a tax on any amount of rent charged from simply receiving a few dollars from someone to stay in a spare room for a day or two to the multitude of short-term rentals conducted every day through online facilitators. The measure charges HCD with collecting and enforcing the assessment for every short-term rental transaction that occurs in the state outside a motel, hotel, or inn, although the agency has no other revenue collection responsibilities, no return and refund processing procedures, collections mechanisms, information technology, personnel, or other capabilities generally found in the state’s tax agencies. The bill provides that operators or transient occupancy businesses must send the assessment to HCD within 90 days of payment, not along with a tax return that covers a taxable period. The Committee may wish to consider amending SB 584 to strike its current tax and instead implement one that:

- Shift collections duties from HCD to the California Department of Tax and Fee Administration (CDTFA)
- Shift the imposition of the tax from the renter to the purchaser,
- Set a *de minimis* threshold for rent payments received, and apply the tax only when payments above that amount are received,
- Require the operator or facilitator to collect the tax from the purchaser, remit it to CDTFA, and direct CDTFA to administer the tax in accordance with the Fee Collections Procedures Law,
- Establish return filing and tax payment requirements,
- Import definitions from the Sales and Use Tax Law and Marketplace Facilitator Act, and
- Grant CDTFA regulatory authority to implement the tax.

3. Time and money. New tax programs require time and money to implement: Tax agencies must design forms, inform sellers, hire necessary staff, and program information technology systems. However, SB 584's tax applies on or after January 1, 2024, less than eight months from now. Additionally, the measure does not provide for any costs needed to implement its tax. Start-up costs would either need to be included in this year's 2022-23 Budget Act, or authorization made to allow the Director of the Department of Finance to make a loan from the General Fund for costs necessary to implement the bill.
4. Related legislation. SB 555 (McGuire, 2021) would have enacted the "Fair and Effective Collection of Due and Payable Transient Occupancy Taxes Derived from Short-term Rentals Arranged by Short-term Facilitators Act of 2021." The bill allowed local agencies to enact an ordinance exclusively delegating their authority to collect TOT to CDTFA and required a "short-term rental facilitator," as defined, to collect TOT from a purchaser and transmit it to the CDTFA, which would then transmit revenue back to the county's transient local agency. The bill died in the Assembly Appropriations Committee.
5. Incoming! The Senate Housing Committee approved SB 584 by a vote of 8 to 2 on April 18th. The Governance and Finance Committee is hearing the measure as the committee of second reference.
6. Urgency. As an urgency statute, SB 584 must be approved by 2/3 vote of each house of the Legislature. Regular legislation takes effect on the January 1 following its passage, but urgency bills take effect as soon as they are passed, signed, and chaptered.

Support and Opposition (4/21/23)

Support: State Building and Construction Trades Council of Ca (Sponsor)
California Democratic Party Renters Council
Housing Now! CA
Inner City Law Center
Public Advocates INC.
Tenants Together
Tenemos Que Reclamar Y Unidos Salvar LA Tierra

Opposition: California Association of Realtors
California Housing Partnership Corporation
Western Electrical Contractors Association

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