Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Buffy Wicks, Chair
AB 1933 (Friedman) – As Amended April 20, 2022

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

SUMMARY: Expands the property tax welfare exemption to eligible nonprofit corporations that sell affordable housing units, subject to certain limitations, to low- 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 owner-occupied and sold only to and purchased only by "first-time homebuyers" that are "low- income families";

   b) The initial down payment on the units must be 5 percent or less of the market value of the units at the time of purchase; and,

   c) The units must be made available 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 persons or families that are not low-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) Specifies that "affordable housing cost" may not exceed 30 percent of gross income (GI) for low-income families.

6) Defines a "first-time homebuyer" to mean a person who does not currently have any ownership interest in any principal residence and has not had any ownership interest in any principal residence in the three-year period prior to the date that the mortgage is executed for a unit purchased by the person that qualifies for a property tax exemption.

7) Defines a “principal residence” to mean any property used as the person’s principal place of residence.

8) Defines "low-income or moderate-income families" as "persons and families of low or moderate income", which means very low income households, as defined in Section 50105, extremely low income households, as defined in Section 50106, lower income households, as defined in Section 50079.5, and persons and families of low income, as defined in Section 50093, and includes persons and families of extremely low income and persons and families of very low income, as those terms are used in Section 50093 of the Health and Safety Code, as-those sections read on January 1, 2022.

9) Requires a nonprofit corporation utilizing the welfare exemption created by this bill 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 (HCD).

10) Provides that a nonprofit corporation making a claim for an exemption under the bill shall not be eligible for the exemption unless the nonprofit corporation signs under penalty of perjury an affidavit affirming to the county assessor that the property owned and operated by the nonprofit corporation is for the future construction of single or multifamily residential units on that property.

11) Provides that the property tax exemption created by this bill shall be operative for lien dates occurring on or after January 1, 2023, and before January 1, 2028.

12) Sunsets the authority for the welfare exemption created by this bill on January 1, 2029.

13) Includes the following legislative findings of intent:

   a) The availability of housing is of vital statewide importance and the development of decent and secure housing for every Californian is a priority of the highest order;

   b) There is currently a severe housing crisis in California that especially impacts the ability of persons and families of low income to purchase and own a home;

   c) To facilitate the acquisition, development, rehabilitation, and financing of restricted affordable dwellings for ownership by persons and families of low income, nonprofits eligible under this act, when acquiring, developing, or rehabilitating property for persons and families of low income, must be exempt from property taxation upon acquisition of the property;

d) It is the intent of the Legislature to apply the requirements of Section 41 of the Revenue and Taxation Code with respect to the exemption under Section 214.15.1 of the Revenue and Taxation Code, as added by this act; and

e) The goal, purpose, and objective of the exemption is to facilitate the acquisition, development, rehabilitation, and financing of restricted affordable dwellings for ownership by persons and families of low income.

14) Requires the State Board of Equalization (BOE) to annually collect and report to the Legislature, data from county assessors to quantify the amount of assessed value exempted and the number of owner-occupied dwelling units created by nonprofits granted this exemption. Requires BOE to provide a report by June 1, 2025, and every June 1 thereafter until June 1, 2028.

15) Requires nonprofits claiming the exemption shall provide information to county assessors, in the form and manner as required by the county assessor, about the additional dwelling units created under the exemption.

16) Requires reimbursement to local agencies and school districts should the Commission on State Mandates determine that this bill contains costs mandated by the state.

17) 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.

18) 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: Unknown.

COMMENTS: ***Author's Statement****:* 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 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."

Property Tax Welfare Exemption: The California Constitution exempts from property taxes, in whole or in part, "property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operating for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual." With regards to housing owned and used by these nonprofit entities, courts have ruled that this "welfare exemption" applies to uses that are either primary to or incidental to and reasonably necessary for the accomplishment of the exempt purposes of the organization. For example, in *Cedars of Lebanon Hospital* v. *County of Los Angeles* (1950) 35 Cal. 2d 729, the court exempted any housing facility for interns, resident doctors, student nurses, and certain hospital employees deemed essential to the operation of a complete modern hospital on a 24-hour basis.

The California Constitution also provides that the welfare exemption applies to "buildings under construction, land required for their convenient use, and equipment in them if the intended use would qualify the property for the exemption." Generally, a vacant property is not considered being *used* for a charitable purpose by the non-profit that otherwise qualifies for the welfare exemption, although the exemption would become effective as soon as construction or other activity begins onsite. However, existing law does provide that non-profits building affordable ownership housing using Habitat for Humanity's approach may qualify for the welfare exemption as soon as the property is acquired and prior to commencement of construction. In providing special treatment for this affordable housing model, the Legislature issued findings proclaiming that its exempt activities are distinct from other affordable housing providers because its exempt purpose is not to own and operate a housing project on an ongoing basis, but to make housing and the land reasonably necessary for the use of that housing available for prompt sale to low-income residents. In other words, the Legislature found that the holding of real property for the future construction of housing on that property is central to the affordable housing model's exempt purposes and activities, and therefore constitutes "use."

Existing law also provides that the welfare exemption applies to property owned and operated exclusively for rental housing occupied by lower-income households, defined as 30-60% of area median income (AMI). A proportionate partial exemption is granted if lower-income households occupy only a percentage of rental housing. The property must be financed with tax-exempt bonds or government grants with specified rents for the lower-income households, financed with low-income housing tax credits (LIHTC), or comprised of at least 90% lower-income households. Owners must also certify that property tax savings from the exemption are used to "maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households."

For- sale housing and the welfare exemption: AB 1559 (Wiggins), Chapter 927, Statutes of 1999, added Revenue and Taxation Code (R&TC) Section 214.15, expanded the welfare exemption by exempting property owned and operated by an eligible nonprofit that would otherwise qualify for the exemption, if that property is used for the rehabilitation or construction of housing sold to a low-income homebuyer and 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). This exemption was created because Habitat was forced to decline subdivision lot donations due to its inability to carry the associated property tax liability. In the Habitat model, the home does not carry a mortgage. The sponsors of this bill state their financing model differs from that of Habitat, because the homebuyer is paying interest on a conventional mortgage instead of all financing going through a zero-interest loan.

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 community land trust (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 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 lower-income families, among others requirements.

Purpose of this bill: This 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. This welfare exemption would sunset in seven years. To evaluate the impact of this property tax exemption, the BOE would collect and report to the Legislature, data from county assessors on the amount of assessed value exempted and the number of owner-occupied dwelling units created by nonprofits granted this exemption.

Arguments in Support: According to the sponsor, the Heritage Housing Partners (HHP), "HHP depends on local and state government subsidies and grants to fund most of their developments. These subsidies are then recast as a 0% interest junior loan with a 30- to 45-year repayment to the low-income homebuyer and paired with a conventional first mortgage from a traditional lender. The 0% interest junior loan is non-performing, meaning the homebuyer only needs to make principal and interest payments on the conventional first mortgage. Because the mortgage is deed restricted, HHP can buy the unit back from the homebuyer after they move out. In 20 years HHP has never failed to do this with one of their units, which is then offered to another low-income family."

Double referred: This bill is double referred. It was heard in the Assembly Committee on Revenue and Taxation and passed on a vote of 9-0 on April 18, 2022.

REGISTERED SUPPORT / OPPOSITION:

Support

Heritage Housing Partners (Sponsor)
Habitat for Humanity, California
Housing Action Coalition
Los Angeles County Office of the Assessor

Opposition

None on file.

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