
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2021 - 2022 Regular

Bill No: AB 1933
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Consultant: Grinnell

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Tax Levy: Yes
Fiscal: Yes

***PROPERTY TAXATION: WELFARE EXEMPTION: NONPROFIT CORPORATION:
LOW-INCOME FAMILIES***

Adds a new welfare exemption from property tax for charitable organizations that develop affordable housing subject to a recorded agreement with a local agency.

Background

Property taxation. 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 it meets several requirements, including that there is an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project’s usage, and provides that the units designated for use by lower income households are continuously available to or occupied by lower income households. 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.

The Constitution also 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. State law implements this Constitutional provision to apply the exemption to facilities in the course of construction together with the land on which the facilities are located as may be required for their convenient use and occupation. As long as construction has started, state law can consider the property exempt, unless construction is subsequently abandoned; reasonable delays in construction are usually not considered abandonment.

The welfare exemption generally applies to property owned by qualified nonprofit organizations used exclusively for charitable purposes. In two instances, the Legislature has allowed charitable organizations to claim the exemption for vacant land subsequently developed into housing for subsequent purchase by income-eligible individuals. First, the “Habitat for Humanity” exemption to allow the welfare exemption to also apply to property (AB 1559, Wiggins, 1999):

- 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
- 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.

Second, the Community Land Trust (CLT) welfare exemption applies to property owned by a community land trust, under the following circumstances (SB 196, Beall, 2018):

- 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.
- 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.
- 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.

SB 196 made the community land trust liable for property taxes in years the property was exempt if the CLT does not develop or rehabilitate it within five years of the lien date following the CLT's acquisition of the property. The exemption is due to sunset after the January 1, 2025 lien date.

AB 1559 and SB 196 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.

Seeking similar treatment for its projects, HHP wants to enact a welfare exemption from property tax for property it owns subject to a regulatory agreement with a local agency.

Proposed Law

Assembly Bill 1933 allows an organization otherwise eligible to claim the welfare exemption 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:

- All units are owner-occupied,
- All units are only sold to and purchased by first-time homebuyers, defined as those who have not purchased a home in the last three years, that are low-income families, defined as those who meet income requirements for extremely low.
- The initial down payment on the units is 5 percent or less of the market value of the unit at the time of purchase.
- Requires the units to be made at an affordable housing cost to buyers, defined as with respect to low-income families may not exceed 30 percent of gross income.

AB 1933 allows the exemption 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. However, the bill specifies that only the units that meet the above requirements qualify the organization for the exemption. Similar to the CLT exemption, AB 1933 specifies that assessor cannot deny the exemption for land not previously designated as open space on the basis that the property does not currently include a single or multifamily residential unit, or a single or multifamily residential unit as so described that is in the course of construction.

AB 1933 makes any organization claiming its welfare exemption subject to an annual independent audit to ensure that the buyers of the units meet the bill's requirements. The organization must 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. The organization filing the claim must also sign an affidavit under penalty of perjury affirming to the 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.

Similar to the CLT exemption, AB 1933 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. 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.

The measure is operative for lien dates on or after January 1, 2023 to January 1, 2028, and sunsets after January 1, 2034. The bill defines several terms, and makes legislative findings and declarations regarding the organization's use of the property constituting exclusive use for purposes of the Constitutional welfare exemption.

State Revenue Impact

According to BOE, "Estimating the future revenue impact of this bill is difficult as it is unknown how many properties would be subject to the bill, the number of units sold, the sales price of those units, the purchase price of the development property, construction time and the amount of tax that would be paid during the construction phase." However, BOE adds that "it is likely that

counties who authorize development or rehabilitation of land to low-income housing will see an increase in local property tax revenues over time versus the amount of local property tax revenue lost in the short-term by authorizing the welfare exemption” because the housing becomes taxable at higher values reflecting new construction.

Comments

1. Purpose of the bill. 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.”

2. Welfare exemption. 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 1933’s explanation is not without precedent – the Legislature adopted identical findings in AB 1559.

3. Section 41. Section 41 of the Revenue and Taxation Code, requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives that the tax expenditure will achieve, detailed performance indicators, along with data collection and reporting requirements (SB 1335, Leno, 2014). AB 1933 states its goal, purpose, and objective is to facilitate the acquisition, development, rehabilitation, and financing of restricted affordable dwellings for ownership by persons and families of low income. The measure then directs 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 by January 1, 2025, and each January 1 thereafter until January 1, 2028.

4. Let’s get technical. Committee staff recommends the following technical amendments:

- Setting forth a process to reduce the exemption on a prorated basis for any property that receives the exemption, but subsequently is developed for nonresidential purposes, or for residences not subject to the regulatory agreement with the local agency.
- Inserting “available” after “made” on Page 3, Line 17.
- Inserting “means a cost” on Page 4, Line 29 before “with”
- Inserting “An officer of the” on Page 5, Line 17, after “unless”

5. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Since AB 1933 changes the methods of assessment for land owned by specified organizations, Legislative Counsel says that it imposes a new state mandate. The measure provides that the state shall not reimburse local agencies for property tax revenue losses, instead stating that should the Commission on State Mandates determine that the bill imposes a reimbursable mandate, reimbursement must be made pursuant to existing statutory provisions.

Assembly Actions

Assembly Revenue and Taxation Committee:	9-0
Assembly Housing and Community Development Committee:	8-0
Assembly Appropriations Committee:	12-0
Assembly Floor:	76-0

Support and Opposition (6/20/22)

Support: Heritage Housing Partners - SPONSOR

Opposition: None submitted.

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