

Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1765 (Quirk-Silva) – As Introduced January 4, 2018

**SUBJECT:** Building Homes and Jobs Act: fee waiver: states of emergency

**SUMMARY:** Makes changes to the Building Homes and Jobs Act of 2017 (the Act). Specifically, **this bill:** Exempts from the \$75 recording fee imposed by the Act any real estate instrument, paper, or notice recorded in connection with real property upon which repairs or reconstruction are taking place as a direct result of a disaster for which the Governor has declared a state of emergency. Takes effect immediately as a tax levy.

**EXISTING LAW:**

- 1) Establishes the Act and, beginning January 1, 2018, imposes a \$75 fee on every real estate document, instrument, paper, or notice required or permitted to be recorded, per each single transaction per parcel, except the fee shall not be imposed on any documents recorded in the following instances:
  - a) In connection with the sale of a home;
  - b) A transfer of real property that is a residential dwelling to an owner-occupier;
  - c) Executed or recorded by the federal government in accordance with the Uniform Federal Lien Registration Act; and
  - d) Executed or recorded by the state or any county, municipality, or other political subdivision.
- 2) Defines “real estate instrument, paper, or notice” as a document relating to real property, including but not limited to, the following: deed, grant deed, trustee's deed, deed of trust, conveyance, quit claim deed, fictitious deed of trust, assignment of deed of trust, request for notice of default, abstract of judgment, subordination agreement, declaration of homestead, abandonment of homestead, notice of default, release or discharge, easement, notice of trustee sale, notice of completion, Uniform Commercial Code (UCC) financing statement, mechanic's lien maps, and covenants, conditions, and restrictions.
- 3) Requires the fee, minus any administrative cost to the county recorder for collection, to be transferred quarterly to HCD and deposited into the Building Homes and Jobs Trust Fund (Trust Fund).
- 4) Requires any moneys appropriated by the Legislature, as well as any other moneys made available to HCD for the purposes of the Trust Fund from any other sources, to be deposited into the Trust Fund.
- 5) Requires moneys collected on and after January 1, 2018, and until December 31, 2018, to be allocated as follows:

- a) Fifty percent of the money shall be available to local governments to update planning documents and zoning ordinances in order to streamline housing production, including, but not limited to, general plans, community plans, specific plans, sustainable communities strategies, and local coastal programs. In addition, funds may be used for new environmental analyses that eliminate the need for project-specific review and local process updates that improve and expedite local permitting. The following shall apply to this funding:
    - i) Five percent of the funding shall be made available for technical assistance from HCD and the Governor's Office of Planning and Research (OPR) to jurisdictions updating specified planning documents;
    - ii) Funds shall be held by HCD until a local government submits a request for use that includes a description of the proposed use of the funds that result in an acceleration of housing production; and
    - iii) Any funds not allocated within the first two years that they are made available by HCD shall be made available to the Multifamily Housing Program (MHP).
  - b) Fifty percent of the money shall be available to HCD to assist persons experiencing or at risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, navigation centers, and the new construction, rehabilitation, and preservation of permanent and transitional rental housing.
- 6) Requires moneys collected on or after January 1, 2019, to be allocated as follows:
- a) Twenty percent of all the money in the Trust Fund shall be expended for affordable owner-occupied workforce housing.
  - b) Seventy percent of moneys in the Trust Fund shall be made available to local governments as follows:
    - i) Ninety percent of the moneys shall be allocated based on the formula specified in Section 5306 of Title 42 of the United States Code, for Federal Fiscal Year 2017 directly to entitlement jurisdictions, except that the portion allocated for nonentitlement areas shall be distributed through a competitive grant administered by HCD.
      - a. Within the competitive grant program, priority points shall be given to: 1) a county with a population of 200,000 or less within the unincorporated areas of the county, 2) a local government that did not receive an award based on the formula specified in Section 5306 of Title 42 of the United States Code in 2016, and 3) to a local government that pledges to use funds to assist persons experiencing or at risk of homelessness, including but not limited to providing rapid rehousing, rental assistance, navigation centers, and the new construction, rehabilitation, and preservation of permanent and transitional rental housing.

- c) Ten percent of the money shall be allocated equitably to local jurisdictions that are nonentitlement areas pursuant to the formula specified in Section 5306 of Title 42 of the United States Code for Federal Fiscal Year 2017.
- d) Allows money allocated to local governments to be expended for the following purposes:
  - i. Predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, and rental housing affordable to extremely low-, very-low, low- and moderate-income households, including necessary operating subsidies;
  - ii. Affordable rental and ownership housing that meets the needs of a growing workforce up to 120% of area median income (AMI), or 150% of AMI in high-cost areas;
  - iii. Matching portions of funds placed into local or regional housing trust funds;
  - iv. Matching portions of funds placed in the Low- and Moderate-Income Housing Asset Funds of former redevelopment agencies retained by successor agencies;
  - v. Capitalized reserves for services connected to the creation of new permanent supportive housing, including, but not limited to, developments funded through the Veterans Housing and Homelessness Prevention Program;
  - vi. Assisting persons who are experiencing or at risk of homelessness, including providing rapid rehousing, rental assistance, navigation centers, emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing;
  - vii. Accessibility modifications;
  - viii. Efforts to acquire and rehabilitate foreclosed, vacant, or blighted homes;
  - ix. Homeownership opportunities, including, but not limited to, down payment assistance; and
  - x. Fiscal incentives or matching funds to local agencies that approve new housing for extremely-low, very-low, low- and moderate-income households.
- e) Require local governments to document the following minimum standards to receive moneys:
  - i) Submit a plan to HCD detailing the manner in which funds will be used by the local government consistent with the eligible uses and to meet the local government's unmet share of the regional housing needs allocation (RNHA);
  - ii) Have a compliant housing element and have submitted a current housing element annual report;

- iii) Submit an annual report to HCD detailing the uses and expenditures of any allocated funds;
  - iv) Expend funds for the purposes allowed under the Act. Two or more local governments may expend moneys on a joint project that is authorized under the eligible uses; and
  - v) Prioritize investments that increase the supply of housing to households that are at or below 60% of AMI, adjusted for household size.
- f) Provides that if a local government does not have a documented plan to expend the money within five years of an allocation, then moneys shall be exempt from the allocation requirements and shall revert to HCD to be used for the Multifamily Housing Program (MHP) or for technical assistance.
- g) Allows local governments to petition HCD to return any funds that are allocated to it. Any funds returned by a local government shall be deposited into MHP.
- 7) Thirty percent of moneys deposited in the Trust Fund shall be made available to HCD as follows:
- a) Five percent shall be used for state incentive programs, including loan and grant programs administered by HCD. If HCD receives insufficient applications for incentive programs, the funds shall be made available for MHP;
  - b) Ten percent shall be used to address affordable homeownership and rental housing opportunities for agricultural workers and their families; and
  - c) Fifteen percent shall be continuously appropriated to the California Housing Finance Agency (CalHFA) for the purpose of creating mixed income multifamily residential housing for lower or moderate-income households.
- 8) Authorizes the Office of State Audits and Evaluation to conduct periodic audits to ensure that the annual allocation to individual programs is awarded by HCD in a timely fashion consistent with the requirements of the Act.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

Background: For well over a decade, California has been struggling with a lack of affordable housing. The crisis has become more acute in the last few years. In 2017, based on local Point in Time counts, 134,000 people were homeless in California on any given night. Already home to the largest homeless population in the country, from 2016 to 2017, California experienced the largest increase in the number of residents experiencing homelessness nationwide – over 16,000 individuals. California accounted for nearly half of all unsheltered people in the country in 2017 (49% or 91,642 people). According to the Legislative Analyst, California needs to produce approximately 180,000 units of housing per year to keep up with population growth – we produce less than half that amount. The lack of affordable housing has the most significant

impact on low-income renter households. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units. Of the 6 million renter households in the state, 1.7 million are paying more than 50% of their income toward rent. The National Low Income Housing Coalition estimates that the state needs an additional 1.5 million housing units that very-low income Californians can afford.

In 2017, SB 2 (Atkins), Chapter of 364, established the Building Homes and Jobs Act (the Act) to provide a permanent funding source to address the state's lack of affordable housing. The Act imposes a \$75 recording fee on all recorded real estate documents, except for documents recorded in connect with the sale of a home, a transfer of property to an owner-occupier (when an owner needs to record a new title after a spouse dies), by the IRS, or by a local or state governmental entity. The fee is capped per transaction at \$225. In the first year that the fee is collected, the revenue is split between state programs to address homelessness and local efforts to update planning documents and zoning ordinances to increase housing production. In year two and onward, 70% of the funds go directly to counties via a formula to address affordable housing needs, and 30% will go to the state to be divided as follows: 15% to the California Housing Finance Agency to create mixed-income rental housing for low- and moderate-income households; 10% to address affordable homeownership and rental housing for agricultural workers and their families; and 5% to fund two programs passed last year, AB 73 (Chiu), Chapter 371 and AB 540 (Roth), Chapter 369 to incentivize housing production.

County recorders are required to transfer the fee collected to the State Controller Office (SCO) on a quarterly basis after deducting the actual and necessary cost of administering collection of the fee. The SCO has received the first payment, but as of the release of this analysis the amount received is not yet known.

Purpose of this bill: This bill would exempt real estate documents recorded on a property as a result of a Governor declared natural disaster from the SB 2 recording fee. The author states, "that the fee might negate the affordability of the unit and thus work against the very purpose of the bill to promote more housing. Within a month of the bill's signing California experienced several massive firestorms that obliterated entire neighborhoods and reduced thousands of homes to ash. In Sonoma County alone CALFIRE placed the losses of well over 5,000 homes. The Thomas fire destroyed almost 1,000 homes. In the community of Montecito, nearly 500 homes were destroyed or badly damaged. Stakeholders place the number of potential documents associated with the rebuilding at approximately eleven separate documents, most of which will be filed with the Recorder at different times. These fees add to the fiscal challenges of rebuilding."

Arguments in support: The Orange County Board of Supervisors writes in support of this bill, "In the fall of 2017 Orange County experienced the Canyon 1 and Canyon 2 fires. The Canyon 1 fire consumed 2,662 acres and damaged five structures, while the Canyon 2 fires scorched more than 9,200 acres destroying 15 houses and 10 other structures. For the Orange County residents who lost homes the financial hardship beyond insurance coverage is significant. The unintended impact of SB 2 adds to the financial hardship of residents must contend with."

Arguments in opposition: Opponents are concerned about the impact this bill will have on fees generated for affordable housing. According to the California Housing Consortium (CHC), "These \$75 fees, imposed last year by SB 2 (Atkins), were the foundation of last year's housing package – the first permanent, dedicated source of funding for affordable housing in the state."

The fees only began to be collected for the first time in January, and the amount of revenue they will ultimately produce remains unknown. CHC is concerned by the prospect of granting exemptions from this fee before it is clear how much money it will generate. We are also concerned that your bill, which admirably seeks to support Californians recovering from natural disasters, will be the first step down a slippery slope, one of many requested exemptions that will make SB 2 less effective – and affordable housing that much more difficult for the state to produce."

Administration issues: Excluding certain types of recordings, the fee is collected on all real estate documents by local county recorders. The few exemptions are for documents recorded by the IRS, state and local government entities, or for specific types of transactions – at the time of sale of a property or when a new title is recorded by a surviving spouse. This bill would require the recorder to determine if an individual is eligible to receive a fee waiver based on whether or not the documents being recorded are for a property impacted by a natural disaster. It is unclear how a recorder will determine if an owner is eligible for the exemption. There is also no requirement that the owner would be facing hardship paying the fee, or that the owner is underinsured and therefore the fee is not absorbable. County recorders are authorized to deduct the cost necessary to collect the fee prior to transmitting fees collected to the SCO on a quarterly basis. This bill would increase administrative costs for collection by requiring the recorder to evaluate whether or not an individual is eligible for this exemption, and would reduce the overall amount collected for affordable housing.

Potential to jeopardize federal aid: At least one county affected by the North Bay Fires of 2017 moved to eliminate permitting fees for rebuilding homes. However, the county was told by Federal Emergency Management Agency (FEMA) that if the county were able to waive local fees, then FEMA would assume that the county had enough money to pay for disaster relief. The county reversed course and did not waive building permit fees. The committee may wish to consider if waiving the SB 2 fee could jeopardize federal funding to individual homeowners.

Other options: One issue that has been raised in relation to this bill is that homeowners that have lost their home in a fire are underinsured and therefore the potential \$75 - \$225 fee would be a hardship. Several bills are moving through the Legislature would assist residents who have lost their homes to wildfires. These bills address a variety of issues, including extending the time to collect the full replacement value of a destroyed or damaged home, allowing a homeowner all of the coverage purchased if that person has decided to buy or rebuild at another location than the insured location, and assistance in finding insurance companies that write extended replacement cost policies.

Bills that address policy concerns following the 2017 wildfires:

- 1) AB 1772 (Aguiar Curry) extends from 24 months to 36 months the period of time within which a policyholder is entitled to collect full replacement benefits under a replacement cost fire insurance policy. *This bill is pending referral in Senate Rules Committee.*
- 2) AB 1797 (Levine) requires residential property insurers, subject to conditional exceptions, to provide policyholders with a replacement cost estimate for the insured dwelling. *This bill is on Assembly Third Reading.*

- 3) AB 1799 (Levine) requires insurers to provide a free copy of a fire insurance policy, including endorsements and the declarations page, within 30 days of a request by a policyholder. *This bill is on Assembly Third Reading.*
- 4) AB 1800 (Levine) clarifies that a policyholder who chooses to relocate to a different location to rebuild or replace a total loss of the insured home is entitled to receive the benefits of extended replacement and building upgrade coverage. *This bill is on Assembly Third Reading.*
- 5) AB 1875 (Wood) requires referral to an alternate source of insurance when an insurer declines to offer extended replacement coverage. *This bill is pending Assembly Appropriations Committee.*
- 6) AB 1923 (Limon) establishes a statutory framework for creating consolidated debris removal programs after natural disasters. *This bill is pending Assembly Appropriations Committee.*
- 7) AB 2229 (Wood) requires a residential property insurer to disclose any fire safety discounts it offers upon renewal of a homeowner's policy. *This bill is pending referral in Senate Rules Committee.*
- 8) AB 2594 (Friedman) extends the statute of limitations for a homeowner to sue their insurer for losses associated with a declared state of emergency. *This bill is on Assembly Third Reading.*

Chaptering issues: This bill has not been updated to reflect changes made by a recently enacted budget trailer bill and as a result chapters out SB 106 (Committee on Budget and Fiscal Review), Chapter 96, Statutes of 2018.

Committee amendment: The committee may wish to consider – in addition to the bills listed above that directly respond to the impact of recent fires on homeowners – the following alternatives to this bill: 1) provide a tax credit to homeowners for unreimbursed losses from a fire in a disaster zone; or 2) allow for a higher renters credit for homeowners displaced by a fire during the time they are rebuilding their home within a disaster zone.

Related legislation:

AB 166 (Salas) authorizes specified low- and very low-income property owners to claim a hardship refund of fees paid in connection with a property refinancing transaction, pursuant to SB 2 (Atkins), as specified. *This bill is currently being held at the Senate Desk.*

AB 1915 (Mathis) exempts from the \$75 recording fee imposed by the Act any document recorded in relation to a mining claim, including, but not limited to, the location notice, notice of intent to hold, and annual affidavit of assessment. *This bill will be heard in this committee on May 9, 2018.*

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Associated Builders and Contractors of Northern California  
California Building Industry Association  
Orange County Board of Supervisors  
Rural County Representatives of California  
San Gabriel Valley Economic Partnership  
Southwest California Legislative Council

**Opposition**

California Housing Consortium  
Housing California

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