

Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 3152 (Chiu) – As Amended April 16, 2018

SUBJECT: Property taxation: welfare exemption: rental housing: moderate income housing

SUMMARY: Creates a property tax exemption for newly constructed rental housing occupied by moderate-income households in certain counties if rents charged are 10% less than fair market rent for that county. Specifically, **this bill:**

- 1) Exempts, under the welfare exemption, "qualified property" used exclusively for rental housing for moderate-income households and related facilities owned and operated by non-profit organizations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation or an eligible limited liability company, as specified.
- 2) Deems qualified property to be within the charitable exemption provided for in the California Constitution if the non-profit organization meets all the requirements of the welfare exemption (Article XIII Section 4(b) and Section 5; Revenue and Taxation Code (R&TC Section 214)).
- 3) Allows a partial exemption equal to that percentage of the property's value that is equal to the percentage that the number of units serving moderate-income households represents to the total number of residential units.
- 4) Allows the partial exemption percentage, as calculated above, to apply to related facilities.
- 5) Defines "related facilities" as any manager's units and any and all common area spaces that are included within the physical boundaries of the rental housing development, including, but not limited to, common area space, walkways, balconies, patios, clubhouse space, meeting rooms, laundry facilities, and parking areas, except any portions of the overall development that are nonexempt commercial space.
- 6) Requires the property owner to certify, under penalty of perjury, the following:
 - a) For a nonprofit organization, that there is an enforceable and verifiable agreement with a public agency or a recorded deed restriction, or other legal document that restricts the project's usage and that provides that the units designated for use by moderate-income households are continuously available to, or occupied by, moderate-income households;
 - b) For a limited partnership in which the managing partner is a nonprofit, that there is an enforceable and verifiable agreement with a public agency or a recorded deed restriction, which the limited partner certifies;
 - c) That the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, moderate-income household occupied units; and,
 - d) That rents charged to the moderate-income households are at least 10% below the fair market rent for the county, as determined by the federal Department of Housing and

Urban Development (HUD), or at least 10% below a higher rent that has been "certified" by the California Housing Finance Agency (CHFA) as fair market rent for the county.

- 7) Requires the CHFA to review and certify the validity of a rent market study submitted by a city, county, or third party to establish a higher fair market rent for a county for purposes of the moderate-income exemption.
- 8) Defines "moderate-income households" as households between 80% and 120% of Area Median Income (AMI).
- 9) Defines a "qualified property" to mean a property that satisfies both of the following:
 - a) Is located in a high-cost county; and
 - b) Is a rental property of five or more units for which construction begins on or after January 1, 2019.
- 10) Defines "high-cost county" as a county so identified by the CHFA.
- 11) Requires rents to be offered at an affordable rent which is defined as 30% of a moderate income household's income.
- 12) Takes immediate effect as a tax levy, but applies beginning with lien dates (January 1) occurring on and after January 1, 2019.
- 13) Specifies that the state will not reimburse any local agency for any resulting property tax revenue loss from the exemption.
- 14) Provides that reimbursement to local agencies shall be made for the costs, if the Commission on State Mandates determines that this bill contains state-mandated costs.

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 this "welfare exemption" in R&TC Section 214.
- 2) Exempts low-income rental housing owned and operated by non-profit organizations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, as specified. (R&TC Section 214(g).)
- 3) Defines "low-income" as households at 80% of AMI adjusted for family size. Provides an exception for a unit occupied by a household that qualified at move-in but household income subsequently increased up to 140% AMI, provided the unit's rent remains restricted. (R&TC Section 214(g)(2)(C)(i).)
- 4) Exempts moderate-income rental housing owned and operated by non-profit organizations, only if the housing is for elderly or disabled families and rented at an affordable rent. (R&TC Section 214(f).)

- 5) Disallows the extension of the welfare exemption to both low-income and moderate-income rental housing for the elderly and disabled families where a non-profit organization does not own and operate the property and instead the non-profit serves as the managing general partner in a limited partnership. (R&TC Section 214(f).)
- 6) Disallows the use of "other legal document" to certify low-income occupancy restrictions at specified rents where a non-profit serves as the managing general partner in a limited partnership. (R&TC Section 214(g)(2)(A)(ii).)
- 7) Caps the exemption provided to a non-profit organization that owns and operates low-income housing to \$10 million in assessed value for those properties the organization owns that do not receive government financing or income tax credits. (R&TC Section 214(g)(1)(C).)

FISCAL EFFECT: Unknown

COMMENTS:

Background: Article XIII, Section 4(b) of the California Constitution authorizes the Legislature to exempt from taxation property used exclusively for religious, hospital, or charitable purposes, as specified. The Legislature has implemented this "welfare exemption" in R&TC Section 214. AB 2144 (Filante), of the 1987-88 Regular Session, amended R&TC Section 214 specifically to exempt low-income housing developments operated by non-profit organizations. As noted in the Senate Revenue and Taxation Committee analysis, AB 2144's proponents argued that the property tax funds then being paid "could better be used in furtherance of the goals of providing low income housing." To this end, R&TC Section 214(g) currently includes a "certification requirement" for low-income housing owners seeking the welfare exemption. Specifically, the law requires a project's owner to "[c]ertify that the funds that would have been necessary 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)(2)(B).)

The existing welfare exemption is only available to non-profit developers who offer rental housing to households at or below 80% of AMI or less. This bill would expand the exemption to units rented to households between 80% and 120% of AMI. To qualify the rental unit must be rented at 10% below the HUD fair market rent (FRMs). Because HUD FRMs are updated every five years and do not always accurately reflect the market, a local government or a developer could pay for an alternative rent study and submit it to CalHFA for approval. In addition, developers could only charge households an affordable rental rate -- 30% of their household income in rent.

Purpose of this bill: According to the author, "AB 3152 would provide an incentive to developers to include rental units for community members who are often commuting long distances from low-cost areas because they cannot secure housing at an affordable rate. In order to receive the welfare exemption, developers would be required to certify under penalty of perjury that the funds needed to pay the property taxes are used to reduce the rents to moderate-income households. Importantly, while AB 3152 assists in the production of units for residents between 80% to 120% of AMI, it would not draw subsidy and resources away from state and federal programs restricted to funding rental units at or below 80% of AMI. Addressing the lack of units for extremely low- and very low-income households should be a priority for California. But the state can't afford to ignore the major gap in available housing for low- to moderate-income

households. To adequately solve the housing crisis, we need a series of policies that make up a comprehensive solution.

Related legislation:

SB 1115 (Hill) would remove the \$10 million in assessed value limitation for low-income housing owned and operated by an eligible non-profit organization that is not receiving government financing or tax credits. *SB 1115 is pending hearing by the Senate Appropriations Committee.*

AB 1193 (Gloria), Chapter 756, Statutes of 2017, extended the welfare exemption to units occupied by persons up to 140% of AMI if they were initially income qualified (80% of AMI) when they moved in, so long as rent restrictions remain in effect.

SB 2 (Atkins), Chapter 364, Statutes of 2017, in part, created a funding stream for affordable housing that included a component for moderate-income housing through additional fees charged when certain documents are recorded.

Double-referred: This bill is double-referred. It was heard in the Assembly Committee on Revenue and Taxation and passed out on a vote of 8-0 on April 9, 2018.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Regional Center Agencies
California Apartment Association
California Council for Affordable Housing
California Housing Consortium
Fiona Ma, CPA, Vice Chair, State Board of Equalization, District 2
LeadingAge California
Mark Farrell, Mayor, City of San Francisco
Non-Profit Housing Association of Northern California

Opposition

None on file

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