Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 723 (

Wicks) – As Amended March 25, 2019

SUBJECT: Low-income housing incentives: leased rental housing: Counties of Alameda and Contra Costa

SUMMARY: Authorizes the counties of Alameda and Contra Costa to pay a low-income rental housing incentive to a lessor who leases residential property to specified entities to operate as low-income rental housing. Specifically, **this bill**:

1) Specifies that the County of Alameda or the County of Contra Costa may provide the lessor of an eligible property located within its territorial boundaries with a low-income rental housing incentive, as follows:

    a) The incentive, as calculated by the county auditor, is comprised of an amount equal to:

        a.i. The county's portion of the eligible property's property tax; and

        a.ii. The city's portion of the eligible property's property tax, if the property is located in an incorporated area.

    b) An eligible property includes all of the following attributes:

        b.i. The property is leased and operated by religious, hospital, scientific, or charitable funds, foundations or corporations, public housing authorities, public agencies, or limited partnerships in which the managing general partner has received a determination that it is a charitable organization under Section 501(c)(3) of the Internal Revenue Code and is operating the property in accordance with its exempt purpose throughout the term of the lease;

        b.ii. The property is leased for a term of 35 years or more, or is transferred with a remaining term of 35 years or more;

        b.iii. The lessor is not qualified for the exemption provided under Section 214 of the Revenue and Taxation Code;

        b.iv. The property is used exclusively and solely for rental housing that is rented for no more than 30 percent of the income level of persons of low income to tenants occupying the property at the commencement of the lease, regardless of the actual income of those tenants;

        b.v. Each new tenant occupying the eligible property after the initial commencement of the property lease must be a person of low income at the time of that tenant's initial occupancy; and b.vi. The commencement date of the lease occurs on or after January 1, 2020, and before January 1, 2024.

2) Defines the "property tax rate" by reference to the 1% *ad valorem* property tax rate in Section 1(a) of Article XIII A of the California Constitution and excludes from the rate any voter-approved additional rates under Section 1(b) of Article XIII A for bonded indebtedness.

3) Requires a city to reimburse the county's portion of the incentive payment upon the county's request.

4) Provides that the Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances in the Counties of Alameda and Contra Costa relating to the provision of adequate rental housing in those counties.

5) Provides that, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXISTING LAW:

1) Exempts property owned by a local government and within its jurisdictional borders from property tax. (California Constitution Article XIII, Section 2(a).)

2) 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).)

3) Allows property used exclusively for religious, hospital, or charitable purposes, as specified to be exempt from property taxation (Revenue and Tax Code Section 214).

4) Exempts under the welfare exemption low-income rental housing owned and operated by non-profit organizations, as specified. (Revenue and Tax Code Section 214(g).)

5) Defines "persons of low income" as persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time under Section 8 of the United States Housing Act of 1937. In the event the federal standards are discontinued, the Department of Housing and Community Development must, by regulation, establish income limits for lower income households for all geographic areas of the state at 80% of AMI, adjusted for family size and revised annually (Health and Safety Code Section 50079.5).

FISCAL EFFECT: This is a county optional program that has no impact on property tax revenues.

COMMENTS:

Purpose of the Bill: According to the author, "AB 723 is an effort to prevent tenant displacement and accelerate the creation of affordable housing. The housing crisis will not be solved by a single solution. We must continue to use the existing space that is already zoned for residential use as a way to add to the overall housing stock. This bill will provide property owners an opportunity to convert existing buildings to affordable housing, charge low rents in return for incentive payments, and make more housing supply available."

Background: In most parts of California, rents are rising faster than incomes. The result is a housing crisis in which over half of renters and over 80 percent of low-income renters are rent-burdened, meaning they pay over 30 percent of their income towards rent. This leaves less money for families to spend on other necessities like food, healthcare, transportation, and education.

Deed Restriction for Existing Housing: Deed-restricted affordable housing is one way to ensure economic security for renters. Such housing is typically built as new construction. However, another important strategy is the acquisition by a public agency or non-profit of existing housing. Such housing is then removed from the speculative market via deed restrictions for affordability, thereby stabilizing the housing for the current tenants. This strategy is utilized by such cities as Oakland, via its Site Acquisition, Rehabilitation and Naturally Occurring Affordable Housing (NOAH) Preservation Program, and San Francisco, via its Small Sites Program.

Typically, existing units that are deed restricted are owned and operated by a non-profit, and therefore eligible to receive exemptions from all property taxes per Section 214(g) of the State's Revenue and Tax Code. However, there are instances where a property owner is amenable to deed-restricting the units for a period of time, but is not willing to sell the building. This bill creates a 4-year pilot program for such property owners within Alameda and Contra Costa Counties. This bill enables such owners to enter into an agreement with the respective county whereby they would receive an incentive payment equal to the city and county's share of their property taxes if they meet the following:

- The property is leased and operated by a public entity or charitable organization under Section 501(c)(3) of the Internal Revenue Code and is operating the property in accordance with its exempt purpose throughout the term of the lease;
- The property is leased for a term of 35 years or more, or is transferred with a remaining term of 35 years or more; and,
- The rents are capped for all tenants – regardless of income – at 30% of the income for a person making 80% AMI.

In addition to enabling the existing property owner to maintain the property, the program created by this bill differs from the more common acquisition strategies in a number of ways, including:

- That the incentive is linked to, but is not, a property tax. Similar to the Senior Citizens Property Tax Assistance Law program and the Capital Investment Incentive program, this "incentive" avoids constitutional conflict. The allocated shares of property tax revenue serve as a benchmark for the incentive amount.

- The incentive is not equal to all of the property tax, but just the county and city's share. This ensures schools and special districts incur no financial impact from the county's decision to offer the incentive. Additionally, this bill ensures no revenues derived from the property dedicated to any bond debt payment are impacted.

- This bill utilizes a rent-based qualification standard for the incentive payment eligibility, rather than income-based standard. This facilitates application to entire buildings that might have at least one resident making more than 80% AMI. This also avoids displacing tenants at the onset of the lease agreement and henceforth if their income subsequently increases.

Staff comments: The bill enables counties to authorize the incentive payment, obligating cities to pay it, and requires cities to backfill the county share upon request of the county. Such a situation could cause conflict between cities and counties. In addition, it is possible that property owners would be willing to enter into an agreement to participate in the incentive program with only the share of a county or city. As such, the Committee may wish to consider removing the obligation for cities within Alameda and Contra Costa Counties to enter into this program if the county does so, and to reimburse the county for its share. Instead, the Committee may wish to consider enabling the counties to enter into an agreement for their portion of the incentive and for cities to enter into agreement for their portion of the incentive.

The bill currently lists the potential lessees as being public housing authorities and public agencies, but also that lessees need to be a charitable organization under Section 501(c)(3) of the Internal Revenue Code. Public housing authorities and public agencies may not be charitable organizations. The Committee may wish to amend the bill's language to clarify the eligibility of public housing authorities and public agencies are not required to be charitable organizations to qualify for the incentive payment.

Committee Amendments: To address the issues raised above, the Committee may wish to consider the following amendments:

- Remove the obligation for cities within Alameda and Contra Costa Counties to enter into this program if the county does so;
- Remove the obligation that cities reimburse the county for its share of the incentive upon request of the county;
- Enable the counties to enter into an agreement for their portion of the incentive and for cities to enter into agreement for their portion of the incentive; and
- Clarify that public housing authorities and public agencies are eligible lessees even though they are not charitable organizations.

Related Legislation:

AB 1734 (Chiu) (2019): Creates a property tax exemption for qualified rental housing occupied by moderate-income households. Pending vote at the Assembly Committee on Revenue and Taxation.

Previous Legislation:

AB 3152 (Chiu) of 2018: This bill would have created 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. It was held under submission in Assembly Committee on Appropriations.

ACA 11 (Caballero) of 2017: This measure would have created the California Middle Class Affordable Housing and Homeless Shelter Account in the General Fund for the support of local and state programs that assist in the development or acquisition of housing, as specified. It was held in this Committee.

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 10-0 on April 8, 2019.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Oakland (sponsor)
California Apartment Association
City of Emeryville
Habitat for Humanity California

Opposition

None on file

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