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AB-1193 Property tax: welfare exemption: low-income housing. (2017-2018)

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Assembly Bill No. 1193

CHAPTER 756

An act to amend Section 214 of, and to add Section 259.15 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 13, 2017. Filed with Secretary of State October 13, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1193, Gloria. Property tax: welfare exemption: low-income housing.

Existing property tax law, in accordance with the California Constitution, provides for a welfare exemption for property that meets certain requirements, including that it is used exclusively for religious, hospital, scientific, or charitable purposes and is owned and operated by certain nonprofit entities. Under existing property tax law, property that meets these requirements that is used exclusively for rental housing and related facilities is entitled to a partial exemption, equal to that percentage of the value of the property that is equal to the percentage that the number of units serving lower income households represents of the total number of residential units, in any year that any of certain criteria apply, including that the owner is eligible for and receives low-income housing tax credits pursuant to specified provisions of the Internal Revenue Code.

This bill, in the case of an owner of property that is eligible for the above-described federal low-income housing tax credit, would provide that a unit would continue to be treated as occupied by a lower income household if the occupants were lower income households on the lien date in the fiscal year in which occupancy of the unit commenced and the unit continues to be rent restricted, notwithstanding an increase in the income of the occupants of the unit to 140% of area median income, but that the unit would cease to be treated as a lower income unit if the income of the occupants of the unit increases above 140% of area median income. The bill would provide that its provisions would be operative only from the 2018–19 fiscal year through the 2027–28 fiscal year.

This bill would require a claim for the welfare exemption on qualified property to be accompanied by an affidavit containing specified information regarding the units occupied by lower income households for which the exemption is claimed and would provide that affidavit is not subject to public disclosure. By imposing new duties upon county tax officials, this bill would impose a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to

public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Existing law requires the state to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding those provisions, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.

This bill would take effect immediately as a tax levy.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments, and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is imposed by Section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) that is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of paragraphs (1) to (5), inclusive, of this subdivision. The owner or the other organization also shall file with the assessor a copy of a valid, unrevoked letter or ruling from the Internal Revenue Service or the Franchise Tax Board stating that the other organization, or the national organization of which it is a local chapter or affiliate, qualifies as an exempt organization under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or Section 23701d, 23701f, or 23701w.

(E) Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution that, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research, and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law, and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, limited liability companies, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in

subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of, existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property that would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property that is equal to the percentage that the number of low- and moderate-income elderly and handicapped families represents of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company, meeting all of the requirements of this section, or by veterans' organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that is equal to the percentage that the number of units serving lower income households represents of the total number of residential units in any year in which any of the following criteria applies:

(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(C) In the case of a claim, other than a claim with respect to property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation, that is filed for the 2000-01 fiscal year or any fiscal year thereafter, 90 percent or more of the occupants of the property are lower income households whose rent does not exceed the rent prescribed by Section 50053 of the Health and Safety Code. The total exemption amount allowed under this subdivision to a taxpayer, with respect to a single property or multiple properties for any fiscal year on the sole basis of the application of this subparagraph, may not exceed ten million dollars (\$10,000,000) in assessed value.

(D) (i) The property was previously purchased and owned by the Department of Transportation pursuant to a consent decree requiring housing mitigation measures relating to the construction of a freeway and is now solely owned by an

organization that qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code.

(ii) This subparagraph shall not apply to property owned by a limited partnership in which the managing partner is an eligible nonprofit corporation.

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) (i) For any claim filed for the 2000–01 fiscal year or any fiscal year thereafter, certify and ensure, subject to the limitation in clause (ii), 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 that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households, subject to the exception in clause (iii), at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(ii) In the case of a limited partnership in which the managing general partner is an eligible nonprofit corporation, the restriction and provision specified in clause (i) shall be contained in an enforceable and verifiable agreement with a public agency, or in a recorded deed restriction to which the limited partnership certifies.

(iii) (I) In the case of an owner of property that is eligible for and receives a low-income housing tax credit pursuant to Section 42 of the Internal Revenue Code, relating to low-income housing credit, a unit shall continue to be treated as occupied by a lower income household if the occupants were lower income households on the lien date in the fiscal year in which their occupancy of the unit commenced and the unit continues to be rent restricted, notwithstanding an increase in the income of the occupants of the unit to 140 percent of area median income, adjusted for family size. However, the unit shall cease to be treated as a lower income unit if the income of the occupants of the unit increases above 140 percent of area median income, adjusted for family size.

(II) This clause shall only be operative from the 2018–19 fiscal year through the 2027–28 fiscal year.

(B) Certify 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.

(3) As used in this subdivision:

(A) "Lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(B) "Related facilities" means 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.

(C) (i) "Units serving lower income households" shall mean units that are occupied by lower income households at an affordable rent, as defined in Section 50053 of the Health and Safety Code or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance. Units reserved for lower income households at an affordable rent that are temporarily vacant due to tenant turnover or repairs shall be counted as occupied.

(ii) (I) "Units serving lower income households" shall also mean units specified in clause (iii) of subparagraph (A) of paragraph (2).

(II) This clause shall only be operative from the 2018–19 fiscal year through the 2027–28 fiscal year.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations that meet all the requirements of subdivision (a) and owned and operated by funds, foundations, limited liability companies, or corporations that meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, "educational purposes" means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and do not include those educational purposes and activities that are primarily for the benefit of an organization's shareholders. Educational activities include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

(k) In the case of property used exclusively for the exempt purposes specified in this section, owned and operated by limited liability companies that are organized and operated for those purposes, the State Board of Equalization shall adopt regulations to specify the ownership, organizational, and operational requirements for those companies to qualify for the exemption provided by this section.

(l) The amendments made by Chapter 354 of the Statutes of 2004 shall apply with respect to lien dates occurring on and after January 1, 2005.

(m) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2017.

SEC. 2. Section 259.15 is added to the Revenue and Taxation Code, to read:

259.15. (a) For the 2018–19 fiscal year to the 2027–28 fiscal year, the claim for welfare exemption on a property that is eligible for and has received low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, relating to low-income housing credit, including Section 42(g)(2)(D) of the Internal Revenue Code, relating to treatment of units occupied by individuals whose incomes rise above limit, in addition to giving any other information as prescribed by the board, when claiming an exemption for units pursuant to clause (iii) of subparagraph (A) of paragraph (2) of subdivision (g) of Section 214 shall be accompanied by an affidavit that provides the following:

(1) A list of all units, for which exemption is claimed, in which the unit will continue to be treated as a low-income unit if the occupant initially met the income limitation and the unit continues to be rent restricted.

(2) All of the following nonpersonally identifiable information about the occupants of the units listed pursuant to paragraph (1):

(A) The unit name or number.

(B) The actual household income of the occupant.

(C) The maximum rent that may be charged to the occupant.

(D) The actual rent charged to the occupant.

(b) The affidavit required to accompany the claim for welfare exemption pursuant to subdivision (a) shall be confidential and shall not be subject to public disclosure.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 259.15 to the Revenue and Taxation Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of an individual's personal and financial information contained in an affidavit accompanying a claim for welfare exemption, as required by this act, it is in the state's interest to limit public access to information.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which adds Section 259.15 to the Revenue and Taxation Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

The protection of sensitive personal and personal financial information contained in an affidavit accompanying a claim for welfare exemption, as required by this act, is consistent with and furthers proper access to documents and information in the possession

of local government agencies.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other 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.

SEC. 6. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 7. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.