

AMENDED IN SENATE MAY 22, 2014

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1203

**Introduced by Senator Jackson
(Coauthor: Senator DeSaulnier)**

February 20, 2014

An act to add Section 66009 to the Government Code, and to amend Section 214 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1203, as amended, Jackson. Property taxation: welfare exemption: rental housing and related facilities: payment-in-lieu-of-taxes agreement.

Existing property tax law establishes a partial welfare exemption for property used exclusively for rental housing and related facilities that are owned and operated by either of any certain types of nonprofit entities or veterans' organizations that meet specified exemption requirements, if either of certain qualifying criteria are met. Existing law requires the owner of the property, in order to be eligible for the exemption, to 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.

This bill would delete that certification requirement for exemption eligibility. The bill would prohibit an assessor from levying any escape or supplemental assessment as a result of the certification requirement, because of a property owner's certification concerning the use of funds that would have been necessary to pay property taxes and a payment-in-lieu-of-taxes agreement with a local government for which the assessor did not, prior to January 1, 2015, levy any assessment. The

bill would require any outstanding ad valorem tax, interest, or penalty that was levied between January 1, 2012, and January 1, 2015, inclusive, as a result of the certification requirement, because of a property owner's certification concerning the use of funds that would have been necessary to pay property taxes and a payment-in-lieu-of-taxes agreement with a local government, to be canceled. The bill would prohibit a refund of tax, interest, or penalty, as so levied, that was paid prior to January 1, 2015. The bill would define "related facilities" for the purpose of the exemption.

The bill would prohibit a local agency, on and after January 1, 2015, from entering into an agreement to charge, or newly impose, a *charge or fee to on* a housing development project ~~that is eligible for described~~ under the exemption, unless the *charge or fee* is imposed pursuant to the Mitigation Fee Act ~~and is consistent with fees paid by all other residential developments~~, *does not prohibit or discriminate against the housing development project, as specified*, or the *charge or fee* is for a specific service *or product* provided directly to the housing development project, that is not provided to those developments not charged, and does not exceed the actual cost of providing the service *or product*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) In Section 50001 of the Health and Safety Code, the
- 3 Legislature has long declared that the subject of housing is of vital
- 4 statewide importance to the health, safety, and welfare of the
- 5 residents of this state.
- 6 (b) The lack of housing, and in particular the lack of decent,
- 7 safe, and sanitary housing that is affordable to low-income
- 8 households, is a critical problem that continues to threaten the
- 9 economic, environmental, and social quality of life in California.
- 10 (c) The Legislature, in enacting subdivision (g) of Section 214
- 11 of the Revenue and Taxation Code in 1987, determined that the
- 12 funds that were being paid in property taxes could better be used
- 13 in furtherance of the goals of providing low-income housing and
- 14 that a property tax exemption was necessary to ensure that
- 15 low-income housing properties with restricted rents would be able
- 16 to provide the residents with a livable community and remain

1 financially feasible over the life of the deed restrictions, generally
2 55 years.

3 SEC. 2. Section 66009 is added to the Government Code, to
4 read:

5 66009. (a) ~~On~~ *Notwithstanding any other law, on and after*
6 *January 1, 2015, a local agency shall not enter into an agreement*
7 *to charge, or newly impose, a charge or fee to on a housing*
8 *development project that is eligible for the property tax exemption*
9 ~~specified described~~ *described* in subdivision (g) of Section 214 of the
10 Revenue and Taxation Code, unless the *charge or fee* meets one
11 of the following conditions:

12 (1) *The charge or fee meets both of the following criteria:*

13 (1)

14 (A) *The charge or fee is imposed pursuant to this act and is*
15 ~~consistent with fees paid by all other residential developments.~~

16 (B) *The imposition of the fee or charge does not prohibit or*
17 *discriminate against the housing development project because of*
18 *any of the following:*

19 (i) *The method of financing the development.*

20 (ii) *The development is intended for occupancy by persons and*
21 *families of very low, low, or moderate income, as defined in Section*
22 *50093 of the Health and Safety Code, or persons and families of*
23 *middle income.*

24 (iii) *The development is subsidized, financed, insured, or*
25 *otherwise assisted by the federal or state government or by a local*
26 *public entity as defined in Section 50079 of the Health and Safety*
27 *Code.*

28 (2) *The charge or fee is for a specific service or product*
29 *provided directly to the housing development project, the service*
30 *or product is not provided to those developments not charged, and*
31 *the charge or fee does not exceed the actual cost of providing the*
32 *service or product.*

33 (b) The Legislature finds and declares that
34 payment-in-lieu-of-taxes agreements are an issue of statewide
35 concern because of the need to prevent arbitrary and discriminatory
36 financial barriers that prevent the construction of needed
37 low-income housing in the state. Therefore, restricting agreements
38 with a local agency as described in subdivision (a) is a matter of
39 statewide concern, and not a municipal affair, as that term is used
40 in Section 5 of Article XI of the California Constitution.

SEC. 3. 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.

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

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

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

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

26 The exemption provided for herein shall be known as the
27 “welfare exemption.” This exemption shall be in addition to any
28 other exemption now provided by law, and the existence of the
29 exemption provision in paragraph (2) of subdivision (a) of Section
30 202 shall not preclude the exemption under this section for museum
31 or library property. Except as provided in subdivision (e), this
32 section shall not be construed to enlarge the college exemption.

33 (b) Property used exclusively for school purposes of less than
34 collegiate grade and owned and operated by religious, hospital, or
35 charitable funds, foundations, limited liability companies, or
36 corporations, which property and funds, foundations, limited
37 liability companies, or corporations meet all of the requirements
38 of subdivision (a), shall be deemed to be within the exemption
39 provided for in subdivision (b) of Section 4 and Section 5 of Article
40 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 occupying the property 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

1 income” as defined by Section 50093 of the Health and Safety
2 Code.

3 (g) (1) Property used exclusively for rental housing and related
4 facilities and owned and operated by religious, hospital, scientific,
5 or charitable funds, foundations, limited liability companies, or
6 corporations, including limited partnerships in which the managing
7 general partner is an eligible nonprofit corporation or eligible
8 limited liability company, meeting all of the requirements of this
9 section, or by veterans’ organizations, as described in Section
10 215.1, meeting all the requirements of paragraphs (1) to (7),
11 inclusive, of subdivision (a), shall be deemed to be within the
12 exemption provided for in subdivision (b) of Section 4 and Section
13 5 of Article XIII of the California Constitution and this section
14 and shall be entitled to a partial exemption equal to that percentage
15 of the value of the property that the portion of the property serving
16 lower income households represents of the total property in any
17 year in which any of the following criteria applies:

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

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

29 (C) In the case of a claim, other than a claim with respect to
30 property owned by a limited partnership in which the managing
31 general partner is an eligible nonprofit corporation, that is filed
32 for the 2000–01 fiscal year or any fiscal year thereafter, 90 percent
33 or more of the occupants of the property are lower income
34 households whose rent does not exceed the rent prescribed by
35 Section 50053 of the Health and Safety Code. The total exemption
36 amount allowed under this subdivision to a taxpayer, with respect
37 to a single property or multiple properties for any fiscal year on
38 the sole basis of the application of this subparagraph, shall not
39 exceed twenty thousand dollars (\$20,000) of tax.

(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) (A) To be eligible for the exemption provided by this subdivision, the owner of the property shall comply with the following:

(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 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.

(B) Notwithstanding any other law, an assessor shall not levy any escape or supplemental assessment as a result of this paragraph as it read prior to January 1, 2015, because of a property owner’s certification concerning the use of funds that would have been necessary to pay property taxes and a payment-in-lieu-of-taxes agreement with a local government for which the assessor did not, prior to January 1, 2015, levy any assessment. Any outstanding ad valorem tax, interest, or penalty that was levied between January 1, 2012, and January 1, 2015, inclusive, as a result of this paragraph as it read prior to January 1, 2015, because of a property owner’s

1 certification concerning the use of funds that would have been
2 necessary to pay property taxes and a payment-in-lieu-of-taxes
3 agreement with a local government shall be canceled. However,
4 there shall be no refund of tax, interest, or penalty, as so levied,
5 that was paid prior to January 1, 2015.

6 (3) As used in this subdivision:

7 (A) “Lower income households” has the same meaning as the
8 term “lower income households” as defined by Section 50079.5
9 of the Health and Safety Code.

10 (B) “Related facilities” means any manager’s units and any and
11 all common area spaces that are included within the physical
12 boundaries of the low-income apartment development, including,
13 but not limited to, common area space, walkways, balconies, patios,
14 clubhouse space, meeting rooms, and parking areas, except any
15 portions of the overall project that are nonexempt commercial
16 structures.

17 (h) Property used exclusively for an emergency or temporary
18 shelter and related facilities for homeless persons and families and
19 owned and operated by religious, hospital, scientific, or charitable
20 funds, foundations, limited liability companies, or corporations
21 meeting all of the requirements of this section shall be deemed to
22 be within the exemption provided for in subdivision (b) of Section
23 4 and Section 5 of Article XIII of the California Constitution and
24 this section. Property that otherwise would be exempt pursuant to
25 this subdivision, except that it includes housing and related
26 facilities for other than an emergency or temporary shelter, shall
27 be entitled to a partial exemption.

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

32 (i) Property used exclusively for housing and related facilities
33 for employees of religious, charitable, scientific, or hospital
34 organizations that meet all the requirements of subdivision (a) and
35 owned and operated by funds, foundations, limited liability
36 companies, or corporations that meet all the requirements of
37 subdivision (a) shall be deemed to be within the exemption
38 provided for in subdivision (b) of Section 4 and Section 5 of Article
39 XIII of the California Constitution and this section to the extent

1 the residential use of the property is institutionally necessary for
2 the operation of the organization.

3 (j) For purposes of this section, charitable purposes include
4 educational purposes. For purposes of this subdivision,
5 “educational purposes” means those educational purposes and
6 activities for the benefit of the community as a whole or an
7 unascertainable and indefinite portion thereof, and do not include
8 those educational purposes and activities that are primarily for the
9 benefit of an organization’s shareholders. Educational activities
10 include the study of relevant information, the dissemination of that
11 information to interested members of the general public, and the
12 participation of interested members of the general public.

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

20 (l) The amendments made by Chapter 354 of the Statutes of
21 2004 shall apply with respect to lien dates occurring on and after
22 January 1, 2005.

23 SEC. 4. An inference shall not be drawn from the changes
24 made by this act with regard to whether existing law allows a local
25 agency to enter into a payment-in-lieu-of-taxes agreement with a
26 property owner of a low-income housing project eligible for the
27 property tax welfare exemption under Section 214 of the Revenue
28 and Taxation Code.