

AMENDED IN ASSEMBLY JULY 2, 2014

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 establish a conclusive presumption that funds from payments under a payment-in-lieu-of-taxes agreement dated before January 1, 2015, were used in compliance with the certification requirement.* 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~~ *require* 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 on a housing development project described under the exemption, unless the charge or fee is imposed pursuant to the Mitigation Fee Act and 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

1 in furtherance of the goals of providing low-income housing and
2 that a property tax exemption was necessary to ensure that
3 low-income housing properties with restricted rents would be able
4 to provide the residents with a livable community and remain
5 financially feasible over the life of the deed restrictions, generally
6 55 years.

7 SEC. 2. Section 66009 is added to the Government Code, to
8 read:

9 66009. (a) Notwithstanding any other law, on and after January
10 1, 2015, a local agency shall not enter into an agreement to charge,
11 or newly impose, a charge or fee on a housing development project
12 described in subdivision (g) of Section 214 of the Revenue and
13 Taxation Code, unless the charge or fee meets one of the following
14 conditions:

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

16 (A) The charge or fee is imposed pursuant to this act.

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

20 (i) The method of financing the development.

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

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

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

34 (b) The Legislature finds and declares that
35 payment-in-lieu-of-taxes agreements are an issue of statewide
36 concern because of the need to prevent arbitrary and discriminatory
37 financial barriers that prevent the construction of needed
38 low-income housing in the state. Therefore, restricting agreements
39 with a local agency as described in subdivision (a) is a matter of

1 statewide concern, and not a municipal affair, as that term is used
2 in Section 5 of Article XI of the California Constitution.

3 SEC. 3. Section 214 of the Revenue and Taxation Code is
4 amended to read:

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

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

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

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

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

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

38 (ii) The owner permits any other organization that meets all of
39 the requirements of this subdivision, other than ownership of the
40 property, to conduct fundraising activities on the property and the

1 proceeds derived from those activities are not unrelated business
2 taxable income, as defined in Section 512 of the Internal Revenue
3 Code, of the organization, are not subject to the tax on unrelated
4 business taxable income that is imposed by Section 511 of the
5 Internal Revenue Code, and are used to further the exempt activity
6 of the organization.

7 (B) For purposes of subparagraph (A):

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

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

17 (C) Subparagraph (A) shall have no application in determining
18 whether paragraph (3) has been satisfied unless the owner of the
19 property and any other organization using the property as provided
20 in subparagraph (A) have filed with the assessor a valid
21 organizational clearance certificate issued pursuant to Section
22 254.6.

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

38 (E) Nothing in subparagraph (A), (B), (C), or (D) shall be
39 construed to either enlarge or restrict the exemption provided for

1 in subdivision (b) of Section 4 and Section 5 of Article XIII of the
2 California Constitution and this section.

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

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

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

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

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

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

1 provided for in subdivision (b) of Section 4 and Section 5 of Article
2 XIII of the California Constitution and this section.

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

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

19 (e) Property used exclusively for religious, charitable, scientific,
20 or hospital purposes and owned and operated by religious, hospital,
21 scientific, or charitable funds, foundations, limited liability
22 companies, or corporations or educational institutions of collegiate
23 grade, as defined in Section 203, which property and funds,
24 foundations, limited liability companies, corporations, or
25 educational institutions meet all of the requirements of subdivision
26 (a), shall be deemed to be within the exemption provided for in
27 subdivision (b) of Section 4 and Section 5 of Article XIII of the
28 California Constitution and this section. As to educational
29 institutions of collegiate grade, as defined in Section 203, the
30 requirements of paragraph (6) of subdivision (a) shall be deemed
31 to be met if both of the following are met:

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

36 (2) The articles of incorporation of the educational institution
37 provide for distribution of its property upon its liquidation,
38 dissolution, or abandonment to a fund, foundation, or corporation
39 organized and operated for religious, hospital, scientific, charitable,

1 or educational purposes meeting the requirements for exemption
2 provided by Section 203 or this section.

3 (f) Property used exclusively for housing and related facilities
4 for elderly or handicapped families and financed by, including,
5 but not limited to, the federal government pursuant to Section 202
6 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section
7 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of
8 Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of
9 Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and
10 operated by religious, hospital, scientific, or charitable funds,
11 foundations, limited liability companies, or corporations meeting
12 all of the requirements of this section shall be deemed to be within
13 the exemption provided for in subdivision (b) of Section 4 and
14 Section 5 of Article XIII of the California Constitution and this
15 section.

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

21 Property used exclusively for housing and related facilities for
22 elderly or handicapped families at which supplemental care or
23 services designed to meet the special needs of elderly or
24 handicapped residents are not provided, or that is not financed by
25 the federal government pursuant to Section 202 of Public Law
26 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public
27 Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law
28 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law
29 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption
30 pursuant to this subdivision unless the property is used for housing
31 and related facilities for low- and moderate-income elderly or
32 handicapped families. Property that would otherwise be exempt
33 pursuant to this subdivision, except that it includes some housing
34 and related facilities for other than low- or moderate-income elderly
35 or handicapped families, shall be entitled to a partial exemption.
36 The partial exemption shall be equal to that percentage of the value
37 of the property that is equal to the percentage that the number of
38 low- and moderate-income elderly and handicapped families
39 occupying the property represents of the total number of families
40 occupying the property.

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

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

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

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

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

1 the sole basis of the application of this subparagraph, shall not
2 exceed twenty thousand dollars (\$20,000) of tax.

3 (D) (i) The property was previously purchased and owned by
4 the Department of Transportation pursuant to a consent decree
5 requiring housing mitigation measures relating to the construction
6 of a freeway and is now solely owned by an organization that
7 qualifies as an exempt organization under Section 501(c)(3) of the
8 Internal Revenue Code.

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

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

15 (i) For any claim filed for the 2000–01 fiscal year or any fiscal
16 year thereafter, certify and ensure, subject to the limitation in clause
17 (ii), that there is an enforceable and verifiable agreement with a
18 public agency, a recorded deed restriction, or other legal document
19 that restricts the project’s usage and that provides that the units
20 designated for use by lower income households are continuously
21 available to or occupied by lower income households at rents that
22 do not exceed those prescribed by Section 50053 of the Health
23 and Safety Code, or, to the extent that the terms of federal, state,
24 or local financing or financial assistance conflicts with Section
25 50053, rents that do not exceed those prescribed by the terms of
26 the financing or financial assistance.

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

33 (B) Notwithstanding any other law, an assessor shall not levy
34 any escape or supplemental assessment as a result of this paragraph
35 as it read prior to January 1, 2015, because of a property owner’s
36 certification concerning the use of funds that would have been
37 necessary to pay property taxes and a payment-in-lieu-of-taxes
38 agreement with a local government for which the assessor did not,
39 prior to January 1, 2015, levy any assessment. *It shall be*
40 *conclusively presumed that funds from payments under a*

1 *payment-in-lieu-of-taxes agreement dated before January 1, 2015,*
2 *were used in compliance with this paragraph as it read prior to*
3 *January 1, 2015. Any outstanding ad valorem tax, interest, or*
4 *penalty that was levied between January 1, 2012, and January 1,*
5 *2015, inclusive, as a result of this paragraph as it read prior to*
6 *January 1, 2015, because of a property owner’s certification*
7 *concerning the use of funds that would have been necessary to pay*
8 *property taxes and a payment-in-lieu-of-taxes agreement with a*
9 *local government shall be canceled. ~~However, there shall be no~~*
10 *refund of A tax, interest, or penalty, as so levied, that was paid*
11 *prior to January 1, 2015. 2015, shall be refunded.*

12 (3) As used in this subdivision:

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

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

23 (h) Property used exclusively for an emergency or temporary
24 shelter and related facilities for homeless persons and families and
25 owned and operated by religious, hospital, scientific, or charitable
26 funds, foundations, limited liability companies, or corporations
27 meeting all of the requirements of this section shall be deemed to
28 be within the exemption provided for in subdivision (b) of Section
29 4 and Section 5 of Article XIII of the California Constitution and
30 this section. Property that otherwise would be exempt pursuant to
31 this subdivision, except that it includes housing and related
32 facilities for other than an emergency or temporary shelter, shall
33 be entitled to a partial exemption.

34 As used in this subdivision, “emergency or temporary shelter”
35 means a facility that would be eligible for funding pursuant to
36 Chapter 11 (commencing with Section 50800) of Part 2 of Division
37 31 of the Health and Safety Code.

38 (i) Property used exclusively for housing and related facilities
39 for employees of religious, charitable, scientific, or hospital
40 organizations that meet all the requirements of subdivision (a) and

1 owned and operated by funds, foundations, limited liability
 2 companies, or corporations that meet all the requirements of
 3 subdivision (a) shall be deemed to be within the exemption
 4 provided for in subdivision (b) of Section 4 and Section 5 of Article
 5 XIII of the California Constitution and this section to the extent
 6 the residential use of the property is institutionally necessary for
 7 the operation of the organization.

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

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

25 (l) The amendments made by Chapter 354 of the Statutes of
 26 2004 shall apply with respect to lien dates occurring on and after
 27 January 1, 2005.

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