

- 2) Authorizes a county to adopt an ordinance authorizing a fee for recording and indexing every instrument, paper, or notice required or permitted by law to be recorded. The base rate of the fee is \$10 for recording the first page and \$3 for each additional page. The recorder has discretion to charge additional fees including:
 - a) Three dollars (\$3) per page on every extra page or sheet of the document if the document does not conform to the dimension requirements in statute.
 - b) One dollar (\$1) for recording the first page on every instrument, paper, or notice required or permitted by law to be recorded to fund a social security truncation program.

This urgency bill:

- 1) Establishes the Building Homes and Jobs Act (the Act). Beginning January 1, 2018, the Act imposes a \$75 fee on every real estate instrument, paper, or notice that is required or permitted by law, on each transaction per parcel of real property, excluding real estate instruments, papers, or notices, recorded in connection with a transfer subject to a documentary transfer tax (*ie* sale documents). These funds shall be remitted quarterly to HCD into the California Homes and Jobs Trust Fund (Trust Fund). The fee shall not exceed \$225.
- 2) Defines “real estate instrument, paper, or notice” as a document relating to real property, including but not limited to the following: deed, grant deed, trustee's deed, deed of trust, conveyance, quit claim deed, fictitious deed of trust, assignment of deed of trust, request for notice of default, abstract of judgment, subordination agreement, declaration of homestead, abandonment of homestead, notice of default, release or discharge, easement, notice of trustee sale, notice of completion, Uniform Commercial Code financing statement, mechanic's lien maps, and covenants, conditions, and restrictions.
- 3) Requires that, upon appropriation by the Legislature:
 - a) Twenty percent of the funds are expended for “affordable owner-occupied workforce housing”
 - b) Ten percent of the funds are expended to address affordable homeownership and rental housing opportunities for agricultural workers.
 - c) The remainder of the funds may be expended for the following purposes:

- Development, acquisition, rehabilitation and preservation of rental housing that is affordable to extremely low, very low, low-, and moderate-income households, including necessary operating subsidies.
- Affordable rental and ownership housing for those earning up to 120% of area median income (AMI).
- Matching funds to local or regional housing trust funds.
- Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund.
- Capitalized reserves for services connected to the creation of new permanent supportive housing.
- Emergency shelters, transitional housing, and rapid rehousing.
- Emergency accessibility modifications.
- Efforts to acquire and rehabilitate foreclosed or vacant homes.
- Homeownership opportunities.
- Grants to local and regional agencies to assist in the development and updating of planning documents and zoning ordinances to accelerate housing production.
- Fiscal incentives or matching funds to local agencies that approve new housing for extremely low, very low, low- and moderate-income households.

- 4) Establishes the Building Homes and Jobs Trust Fund Governing Board (governing board), which has the authority to review and approve HCD's recommendations for all funds distributed from the Fund. The governing board shall include:
- a) One representative from HCD, one representative from CalHFA, and one representative from the Office of the Treasurer. These representatives shall be appointed by the Governor.
 - b) No fewer than two real estate licensees, a local government official from northern and southern California, and a representative from the northern and southern California home building industry. These representatives shall be appointed by the Governor.
 - c) Six public members. Two must be representative of non-profit affordable housing development, one appointed by the Speaker of the Assembly (Speaker) and one appointed by the Senate Rules Committee. Two of the public members must be representative of for-profit affordable housing development, one appointed by the Speaker and one appointed by the Senate Rules Committee. The Speaker and the Senate Rules Committee shall each

appoint one additional public member who shall be representative of, or have experience in, one or more specified areas of expertise.

- 5) Requires HCD, in consultation with CalHFA, the California Tax Credit Allocation Committee (CTCAC), and the California Debt Limit Allocation Committee (CDLAC) to submit the Building Homes and Jobs Investment Strategy (investment strategy) as part of the 2018-19 Budget. HCD shall update the investment strategy every five years thereafter.
- 6) Requires HCD to hold at least four public workshops in different regions of the state to inform the development of the investment strategy. The investment strategy to do the following:
 - a) Identify the statewide needs, goals, objectives, and outcomes for housing for a five-year time period. Goals should include targets of the total number of affordable homes created and preserved with the funds.
 - b) Meet the following minimum objectives:
 - Encourage economic development and job creation by helping to meet the housing needs of those earning up to 120% AMI.
 - Identify opportunities for coordination among state departments and agencies to achieve greater efficiencies, increase the amount of federal investment in production, services, and operating costs of housing, and promote energy efficiency in housing produced.
 - Incentivize the use and coordination of non-traditional funding sources.
 - Incentivize innovative approaches that produce costs savings to local and state services by reducing the instability of housing for frequent, high-cost users of hospitals, jails, detoxification facilities, psychiatric hospitals, and emergency shelters.
 - c) Provide for a geographically balanced distribution of funds, including a 50% direct allocation of funds to local governments. To receive an allocation, a local government shall:
 - Submit a plan to HCD detailing how allocated funds will be used by the local government consistent with this Act.
 - Have a compliant housing element with the state, submit annual reports on the general plan, as required under existing law, and submit an annual report to HCD that provides ongoing tracking of the uses and expenditures of any allocated funds.

- Emphasize investments that serve households that are at or below 60% AMI.
- 7) Requires the California State Auditor's Office to conduct periodic audits to ensure the annual allocation to individual programs is awarded by HCD in a timely fashion.
 - 8) Requires HCD, as part of its annual report to the Legislature pursuant to existing law, to report how funds allocated under this Act were expended. The report shall assess the impact of the investment on job creation, the economy, and an analysis on the effectiveness of the funding in allowing persons at risk of homelessness to retain permanent housing. The report shall be made available to the public on HCD's Web site.
 - 9) Makes several findings and declarations, including the intent of the Legislature to enact legislation that would create a Secretary of Housing within state government to oversee all activities related to housing in the state. In creating the position, it is the intent of the Legislature that all professional entities that play a role in the housing market be authorized to be incorporated to have a clearer and more unified approach to housing in California.

COMMENTS:

- 1) *Purpose.* According to the author, California is facing a housing affordability crisis. The state ranks 49th nationwide in housing units per capita. Due to this housing shortage, 50% of moderate-income and 100% of low-income families in our state struggle to afford the cost of housing in their local communities. The most vulnerable of them risk joining the 118,000 Californians who are already homeless on any given night. This crisis affects more than just residents: the state also loses \$140 billion per year in output (or 6 percent of state GDP) due to the lack of affordable housing. Prominent business groups across the state agree that California needs to increase the supply of housing options affordable to workers, so companies can compete for the talent that drives California's economy.

An ongoing funding source for affordable housing is critical to stabilize the state's housing development and construction marketplace. With a sustainable source of funding in place, more affordable housing developers will take on the risk that comes with development and, in the process, create a reliable pipeline of well-paying construction jobs. The Building Homes and Jobs Act establishes

a permanent funding source that will increase California's supply of affordable homes, creates jobs, and spur economic growth without incurring additional debt. The act imposes a \$75 fee on real estate transaction documents, excluding residential and commercial property sales, and is estimated to generate hundreds of millions of dollars annually at a time when the need for this increased and ongoing funding source in California has never been more urgent. Failure to act now will leave too many Californians without an affordable place to call home and make it difficult for California businesses to remain competitive.

- 2) *Background.* Historically, the state has funded housing programs through the sale of general obligations bonds. Most recently, the voters approved a \$2.1 billion bond through Proposition 46 in 2002 and then a \$2.85 billion bond through Proposition 1C in 2006. These funds financed the construction, rehabilitation, and preservation of 183,000 units, including shelter spaces and permanent supportive housing for the homeless. HCD has awarded almost all of the funds made available under these propositions, particularly in its main programs.

Until 2011, the Community Redevelopment Law required redevelopment agencies to set aside 20% of all tax increment revenue to increase, improve, and preserve the community's supply of low- and moderate-income housing available at an affordable housing cost. In fiscal year 2009-10, redevelopment agencies deposited \$1.075 billion of property tax increment revenues into their Low- and Moderate-Income Housing Funds. With the elimination of redevelopment agencies, this source of funding for affordable housing is no longer available.

According to the Department of Finance (DOF) and US Department of Housing and Urban Development, California receives about \$627 million/year in funding for three major programs: HOME Investment Partnerships Program (HOME), Emergency Solutions Grants (ESG) Program, and Community Development Block Grant (CDBG) Program. Over the last ten years, these programs have been reduced by 34%. Following the 2016 general election, Congressional Republicans have spoken about 1% funding cuts for non-defense discretionary funding across the board, which, according to the Center on Budget Policies and Priorities, would result in an additional 29% cut in funding to these programs. According to the Department of Finance, the HOME and CDBG programs are most at risk of being cut by 2/3 or cut completely, which means significant cuts in funding for low-income and homeless Californians.

A recent report by HCD highlighted the depths of the resulting housing shortage, showing that statewide for very low-, and extremely low- households, California is short about 1.5 million rental units.¹ That same report showed that for low-, moderate-, and above moderate-income levels, there was a sufficient number of rental housing, at least on a statewide average basis, indicating that the focus should be on the poorest households. In a March 2016 informational hearing, this committee heard that California's 2.2 million extremely low-income and very low-income renter households are competing for only 664,000 affordable rental units.

The Act would create a permanent and ongoing source of funding for housing to fill the gap in funding lost from the loss of redevelopment agencies and the exhaustion of prior bond funds.

- 3) *Types of documents covered.* This bill applies the \$75 fee to the recording of all real estate-related documents except those recorded in connection with the sale of real property and those expressly exempted from payment of recording fees. There are many types of documents that fall under the proposed fee, including, but not limited to:

¹ California's Housing Future: Challenges and Opportunities (Public Draft) – op cit. Extremely low income households earn less than 30% of the area median income (AMI); very low income households earn between 30%-50% of AMI.

- Deeds and grant deeds
- Trustees' deeds and deeds of trust
- Amendments of deeds of trust
- Quit claim deeds
- Fictitious deeds of trust
- Assignments of deeds of trust
- Construction trust deeds
- Reconveyances
- Easements
- Maps
- Lot line adjustments
- Covenants, conditions, and restrictions
- Affidavits
- Abstracts of judgment
- Subordination agreements
- Declarations and abandonments of homestead
- Requests for notice of default
- Notices of default
- Notices of trustee sale
- Substitution of trustee
- Trustee's deed upon sale
- Notices of completion
- Notice of rescission of declaration of default
- Liens
- Releases or discharges
- Leases and assignments of leases
- Assignments of rents
- Uniform Commercial Code amendment, assignment, continuation, statement, or termination

Presently the Act excludes sales documents, which means home purchases are exempt. Arguably, there is a strong nexus between property transactions and the production of affordable housing. Further, the exclusion of these documents likely reduces the funds available under this Act. Going forward, the author may wish to consider applying the fee to sales transactions.

- 4) *How the Trust Fund can be used.* The Act requires 20% of the funds to be expended for affordable owner-occupied workforce housing and 10% to address affordable homeownership and rental housing opportunities for agricultural workers and their families. The remaining funds may be used for a number of specified activities, including but not limited to the following: the development, acquisition, rehabilitation, and preservation of rental housing that is affordable to extremely low, very low, low- and moderate-income households, including necessary operating subsidies; affordable rental and homeownership opportunities that meets the needs of those earning up to 120% AMI, as well as downpayment assistance; matching grants to local housing trust funds; capitalized reserves for services connected to the creation of new permanent supportive housing; emergency shelters, transitional housing, and rapid rehousing; grants to local and regional agencies to assist in the development and updating of planning documents and zoning ordinances; and fiscal incentives or

matching funds to local agencies that approve new housing for extremely low, very low, low- and moderate-income households.

- 5) *Investment Strategy.* The Act requires HCD, as part of the 2018-19 Budget, to submit an investment strategy and provide an update every five years, thereafter. The investment strategy must identify the statewide needs, goals, objectives, and outcomes for housing for a five-year period and meet a number of other minimum requirements. HCD must seek public input by holding at least four workshops across the state to inform the development of the investment strategy.
- 6) *Accountability and reporting requirements.* Local jurisdictions may only receive funds if they: 1) submit a plan detailing how funds will be used, 2) submit a compliant housing element as required under existing law, 3) submit an annual report on the General Plan as required under existing law, 4) submit an annual report to HCD that provides ongoing tracking and uses of the funds, and 5) emphasize investments that serve households at or below 60% AMI.

Additionally, HCD, as part of its annual Legislative Report, shall report how funds were allocated and expended pursuant to this Act, including efforts to promote geographically balanced distribution of funds. The report must assess the impact of the investment on job creation and the economy and an analysis of the effectiveness of allowing persons at risk of homelessness to remain permanently housed.

The Auditor's Office must conduct periodic audits to ensure the allocation to individual programs is awarded by HCD in a timely fashion consistent with the requirements in this Act.

- 7) *50/50 split.* The Act would require HCD as part of the investment strategy to provide for a geographically balanced distribution of funds, and to allocate 50% of those funds directly to local governments. Presently, HCD does not have a method of distributing funds statewide directly to local governments, and it is not clear if these funds would be allocated on a formula basis or on a competitive basis. Some localities do not have an infrastructure in place to award housing funds. Further, HCD has existing programs in place that could be funded under this Act, which would ensure the funds are allocated quickly. Creating a new method for awarding these funds would take time and slow down the distribution of these funds when housing funds are in more need than ever.

Given that HCD has existing programs in place, the author moving forward may wish to consider removing the 50/50 split and instead require HCD to award the funds generated under this Act on a statewide basis.

- 8) *Arguments in support.* The sponsors of the bill, California Housing Consortium and Housing California, estimate that this bill will create 29,000 jobs for every \$500 million raised, primarily in the construction sector. This bill would also leverage an additional \$2.78 billion in federal, local, and private sector investment. Business organizations support creating a sustainable and self-renewing source of funding in response to the affordable housing crisis. This crisis results in the loss of \$140 billion per year in GDP to the state of California. Increasing the supply of housing options affordable to workers will help companies compete for the talent that drives California's economy.
- 9) *Arguments in opposition.* According to the County Recorders' Association of California, this bill would increase the minimum recording fee by 750% (*ie* from \$10 to \$75), which will impact small contractors recording mechanics liens or releases, customers releasing child support, tax or other liens to clear their credit; or a widow/widower recording an affidavit of their spouse's death. Further, this bill would create administrative challenges for County Recorders. The Inyo County Board of Supervisors argue that by exempting sales documents, this bill would single out those facing foreclosure and miners who are required to file annual proof of labor forms to keep their claims. The Board of Supervisors also state that the bill does not guarantee funds would be distributed to Inyo County specifically.
- 10) *Double-referral.* This bill was double-referred to the Senate Governance and Finance Committee.

RELATED LEGISLATION:

AB 1335 (Atkins, 2015) — Established the Building Homes and Jobs Act of 2015 to provide funding for affordable housing imposing a \$75 fee on every real estate instrument, paper, or notice that is required or permitted by law for each single transaction per parcel of real property, excluding real estate instruments, papers, or notices recorded in connection with a transfer subject to a documentary transfer tax. *This bill died on Assembly Third Reading.*

SB 391 (DeSaulnier, 2014) — Imposed a fee of \$75 on the recording of each real estate-related document, except for those documents recorded in connection with a transfer subject to a documentary transfer tax, and directed the money to the

California Homes and Jobs Trust Fund. *This bill died on the Assembly Inactive File.*

SB 1220 (DeSaulnier, 2012) — Imposed a fee of \$75 on the recording of each real-estate related document, except for those documents recorded in connection with a transfer subject to a documentary transfer tax, and directed the money to the Housing Opportunity and Market Stabilization (HOMeS) Trust Fund. *This bill failed passage on the Senate Floor.*

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, February 22, 2017.)

SUPPORT:

Housing California (co-sponsor)
California Housing Consortium (co-sponsor)
Affirmed Housing
Affordable Housing NOW!
American Federation of State County, and Municipal Employees (AFSCME),
AFL-CIO
Alliance of Californians for Community
Empowerment
Bay Area Business Roundtable
California Association of Realtors
California Building Industry Association
California Coalition for Rural Housing
California Community Economic Development Association
California Council for Affordable Housing
California Faculty Association
California Federation of Teachers
California Housing Partnership Corporation
California Labor Federation
California Reinvestment Coalition
California Rural Legal Assistance Foundation
Central City Association of Los Angeles
Charities Housing
Christian Church Homes (CCH)
City of Belmont
City of Cloverdale

City of Daly City
City of Fort Bragg
City of Goleta
City of Hayward
City of Indio
City of Los Angeles
City of Napa
City of Sacramento
City of San Jose
City of San Mateo
City of San Rafael
City of Santa Monica
City of Santa Rosa
City of Union City
City of Walnut Creek
Community Corporation of Santa Monica
Community Development Commission of Mendocino County
Community Economics, Inc.
Community Housing Improvement Program
Community Housing Improvement Systems & Planning Association, Inc.
Community Housing Opportunities Corporation
Community Housing Partnership
Corporation for Supportive Housing
Council of Community Housing Organizations
Downtown Women's Center
EAH Housing
East Bay Asian Local Development Corporation
Enterprise Community Partners
Family Care Network, Inc.
First Place for Youth
Greenbelt Alliance
Habitat for Humanity, California
Highridge Costa Companies
Housing Authority of the County of Santa Barbara
Housing Consortium of the East Bay (HCEB)
Housing Trust Silicon Valley
Innovative Housing Opportunities
The John Stewart Company
The Kennedy Commission
League of California Cities
Leading Age California

Life Skills Training & Educational Programs, Inc. (LifeSTEPS)
LINC Housing
Little Tokyo Service Center
Los Angeles Business Council
Mayor, City of Santa Barbara-Helene Schneider
Mercy Housing
Metropolitan Transportation Commission
Monterey Bay Economic Partnership
Mutual Housing California
Napa Valley Community Housing
Nonprofit Housing Association of Northern California
North Bay Leadership Council
North Orange County Chamber of Commerce
PolicyLink
Promise Energy, Inc.
Public Law Center
The Northern California Land Trust
The Pacific Companies
Resources for Community Development
RISE
Rural Community Assistance Corporation
San Diego and Imperial Counties Labor Council, AFL-CIO
San Diego Housing Federation
San Francisco Chamber of Commerce
San Luis Obispo County Housing Trust Fund
Satellite Affordable Housing Associates
Self-Help Enterprises
Silicon Valley Leadership Group
Small Businesses for Affordable Housing in Petaluma
Southern California Association of Nonprofit Housing
State Building and Construction Trades Council, AFL-CIO
State Controller Betty Yee
SV@Home
Tenderloin Neighborhood Development
Town of Danville
Vallerie Chiappone, Individual
Valley Economic Development Center
Ventura Council of Governments
Wakeland Housing and Development Corporation
Western Center on Law and Poverty
4 individuals

OPPOSITION:

County Recordors' Association of California
Inyo County Board of Supervisors

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