
THIRD READING

Bill No: SB 1164
Author: Newman (D)
Amended: 5/16/24
Vote: 21- Urgency

SENATE REVENUE AND TAXATION COMMITTEE: 6-0, 4/10/24
AYES: Glazer, Ashby, Bradford, Dodd, Padilla, Skinner
NO VOTE RECORDED: Dahle

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/16/24
AYES: Caballero, Jones, Ashby, Becker, Bradford
NOES: Seyarto, Wahab

SUBJECT: Property taxation: new construction exclusion: accessory dwelling units

SOURCE: Author

DIGEST: This bill enacts a new construction exclusion of specified duration for the addition or construction of an accessory dwelling unit (ADU).

ANALYSIS:

Existing law:

- 1) Provides that all property is taxable unless explicitly exempted by the Constitution or federal law (California Constitution, Article XIII, Section One).
- 2) Limits the maximum amount of any ad valorem tax on real property at 1% of full cash value, plus any locally-authorized bonded indebtedness, and directs assessors to only reassess property when it is newly constructed or when ownership changes (California Constitution, Article, XIII A, Section One).

- 3) Allows the Legislature to exclude from the definition of “new construction” any of the following property improvements, among others (California Constitution, Article XIII A, Section 2(c)):
 - a) Any active solar energy system (Proposition 7, 1980).
 - b) Any fire sprinkler system, as defined (Proposition 31, 1984).
 - c) Any portion or structural component that makes the dwelling more accessible for a disabled or severely disabled person (Proposition 110, 1990 and Proposition 177, 1994).
 - d) Seismic retrofit components (Proposition 23, 1984 and Proposition 127, 1990).
 - e) The construction or installation of a rain water capture system completed on or after January 1, 2019 (Proposition 72, 2018).
- 4) Enacts statutory new construction exclusions for seismic retrofits and contaminated property.
- 5) Defines ADU to mean an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence.
- 6) Requires local agencies to ministerially approve, within specified timelines, an application for a building permit within a residential or mixed-use zone to create one or more ADUs that meet all state and local requirements.
- 7) Provides that a local agency may establish local development standards for both attached and detached ADUs, except that they cannot establish the following:
 - a) A minimum square footage requirement for either an attached or detached ADU that prohibits an efficiency unit.
 - b) A maximum square footage requirement for either an attached or detached ADU that is less than 850 square feet, or 1,000 square feet for an ADU that provides more than one bedroom.
 - c) A height limit of less than 16 to 25 feet, depending on the specified circumstance.

- d) Specified requirements that preclude development of an ADU of at least 800 square feet and that four-foot side and rear yard setbacks, including minimum or maximum size, limits on lot coverage, limits on floor area ratio, requirements for open space, requirements for front setbacks, and minimum lot size.
- 8) Prohibits local agencies from requiring owner-occupancy on a parcel containing an ADU.
- 9) Permits cities and counties that have a local ADU ordinance to allow ADUs to be sold separately or conveyed from the primary residence.
- 10) Requires local agencies to create a program for the pre-approval of standardized plans for ADUs.

This bill:

- 1) Enacts a new construction exclusion for the addition or construction of an ADU, where construction is completed between January 1, 2025, and January 1, 2030, that remains in effect until:
 - a) Ten years have passed since the construction of the ADU was completed, or
 - b) The ADU changes ownership.
- 2) Directs assessors to establish a new base year value for the unit upon the occurrence of either above event.
- 3) Requires a property owner to:
 - a) Notify the assessor prior to, or within 30 days of, completion of the project that the property owner intends to claim the exclusion for an ADU.
 - b) Submit an affidavit stating that the owner shall make a good faith effort to ensure the unit will be used as residential housing for the duration the owner receives the exclusion.
 - c) Maintain the residential use of the accessory dwelling unit receiving the exclusion.
 - d) Provide any additional documentation that the assessor requests, with all additional documents necessary to support the exclusion filed by the property owner with the assessor not later than six months after the completion of the project.

- e) Inform the county assessor within 30 days of the conversion of the unit to any use other than for residential housing.
- 4) Defines an ADU similarly as existing law, which includes efficiency units and manufactured homes.
- 5) Directs the State Board of Equalization (BOE) to prescribe the manner and form for claiming the exclusion.
- 6) Provides that the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to the bill.
- 7) Sunsets its provisions on January 1, 2041.

Background

Generally, when something of value is physically added to real property, what is added is considered new construction and assessed at current market value. This value is added to the existing base year value of the real property, but generally does not trigger reassessment of land or structures previously constructed. For example, increasing the square footage of their home, or adding a garage, pool, or new structure is generally considered new construction. SB 1164 would add to the list of items either the voters or the Legislature have excluded from new construction, meaning assessors would not value a newly constructed ADU for property taxes like other new construction, contingent on a property owner complying with the bill's requirements.

The Legislature has long identified ADUs, also known as second units, in-law apartments, or "granny flats," as a valuable form of housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods. In 1982, the Legislature first provided a framework for local governments to enact ordinances that permit the construction of ADUs, while preserving local government flexibility to regulate the units as necessary. When fewer ADUs than anticipated were developed, the Legislature significantly amended ADU law in 2002 to address some of the barriers property owners encountered while trying to develop them. There are few other areas where the Legislature has been more active than with regard to creating incentives for homeowners to construct ADUs. Beginning in 2016, when the ADU law was re-written, the Legislature has enacted at least 15 measures that amend ADU law to some degree, plus three more in 2023. Housing experts state the changes enacted before 2021 have led to a significant increase in ADU

construction in the state. This bill adds another incentive – up to 10 years of deferred property taxes – to this growing list.

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

According to the Senate Appropriations Committee:

- The Board of Equalization (BOE) estimates that this bill would result in annual property tax revenue losses of \$20 million. Reductions in local property tax revenues, in turn, increase General Fund Proposition 98 spending by up to roughly 50 percent (the exact amount depends on the specific amount of the annual Proposition 98 guarantee, which in turn depends upon a variety of economic, demographic and budgetary factors).
- BOE indicates that it would incur General Fund costs of \$10,000 in 2024-25, and \$65,000 in 2025-26.
- By adding to the duties of local tax officials in administering the property tax, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). The magnitude is unknown.

SUPPORT: (Verified 5/17/24)

California Apartment Association
California Association of Realtors
City of Alameda

OPPOSITION: (Verified 5/17/24)

California Assessors' Association
California Special Districts Association
California State Association of Counties
California Teachers Association
City of Citrus Heights
City of Encinitas
City of Garden Grove
City of La Verne
City of Redwood City
City of San Marcos
City of Simi Valley

City of Whittier
League of California Cities
San Rafael/Marin County Council of Mayors & Council Members
South Bay Cities Council of Governments

ARGUMENTS IN SUPPORT: According to the author, “Despite the numerous measures the legislature has advanced in recent years to remove administrative barriers to the construction of Accessory Dwelling Units, barriers still persist which serve to deter property owners who might otherwise be inclined to build an ADU on their property. Currently, when a new addition to a home or an ADU is completed, the resulting additional square footage is assessed at 1% of the value of the addition, which is then appended to the property owner’s yearly property tax bill. As an example, for an ADU valued at \$200,000, a property owner would incur an ongoing property tax increase of \$2,000 a year. The prospect of such an immediate increase in an owner’s property tax burden, especially on top of the considerable expense associated with the construction of the ADU, can serve as a substantial deterrent to building an ADU, despite the benefits that would eventually accrue to a property owner. By temporarily waiving the tax liability associated with the ADU, SB 1164 will make the construction of ADUs more attractive and manageable to California homeowners, consistent with the State’s broader housing creation goals.”

ARGUMENTS IN OPPOSITION: According to a coalition of local government organizations, “SB 1164 would negatively impact local government property tax revenue by exempting newly constructed accessory dwelling units (ADUs) from property tax assessment, if certain conditions are met. Since 2018, there have been year over year increases in the number of newly permitted and constructed ADUs throughout the state. According to data from the UC Berkeley Center for Innovation, from 2018 to 2022, roughly 10,276 ADUs were built, while 28,547 units were permitted during that same period. It is clear there is a demand for ADUs that California cannot keep pace with. This bill assumes property taxes are an impediment that disincentivize homeowners from building ADUs. However, the data show significant increases in the number of permits and constructed units in previous years, signaling that property tax adjustments have not exclusively halted or discouraged construction on new ADUs. Separate from property tax, the disproportionate share of accessory dwelling units that have been permitted, but not yet built, represents a supply and demand concern that is wholly divorced from property tax considerations. By creating a property tax assessment exemption on newly constructed ADUs, SB 1164 will deprive local governments of the revenues needed to provide and expand services that are of communitywide benefit. Property taxes generate a critical revenue source local governments depend on to

provide services, including public safety, education, parks, libraries, public health, and fire protection.”

Prepared by: Colin Grinnell / REV. & TAX. / (916) 651-4117
5/18/24 16:20:55

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