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SB 391 (DeSaulnier) California Homes and Jobs Act of 2013

August 2013

SDCTA Position: **OPPOSE**

Rationale for Position: SB 391 imposes a fee that will negatively impact California counties and individuals. The bill lacks a specified plan on how the Department of Housing and Community Development will carry out its mission to build affordable housing units with this new fund, and therefore it is unknown how much San Diego will potentially receive to address its needs. It is also unknown how the remaining authorized funds from Proposition 1C will be distributed. San Diego should continue to find a local reliable source of funding to address its shortage of affordable housing units, as well as work to produce efficiencies to ensure dollars invested produce the most amount of units.

Title: "California Homes and Jobs Act of 2013 (DeSaulnier)"
Jurisdiction: State
Type: Tax
Vote: 2/3 required to pass
Status: Passed Senate. Referred to Assembly Committee on Housing and Community Development and Committee on Labor and Employment. Passed Assembly Committee on Labor and Employment and re-referred to Assembly Committee on Labor and Employment.
Issue: Affordable housing
Description: The bill requires a fee of $75 on every real-estate related document and transaction except for those that involve a documentary transfer tax and directs money to the California Homes and Jobs Trust Fund. The legislature has the authority to allocate funds for "the development, acquisition, rehabilitation, and preservation of homes affordable to low- and moderate-income households including emergency shelters, transitional and permanent rental housing, foreclosure mitigation, and homeownership opportunities."
Fiscal Impact: The measure is estimated to create 29,000 jobs annually in the construction industry and leverage $2.78 billion in federal, local, and private financing for housing. The $75 fee is projected to garner $525 million per year for the Homes and Jobs Trust Fund ranging from $300 million in low-volume years to $720 million in high-volume years.

Background:

Proposition 1C (2006):
Prop 1C, "The Housing and Emergency Shelter Trust Fund Act of 2006" was passed in 2006 by a fifty-eight percent to forty-two percent margin. The goal behind the proposition was to raise additional revenue to fund affordable housing units in California for families with low or moderate incomes. Its stated financial objective was to raise $2.85 billion through general obligation bonds with $3.3 billion going to pay the interest on the bonds making the estimated total cost of the measure $6.15 billion. The funds raised were allocated to development, homeownership and multifamily housing programs. Prop 1C closely

resembled Prop 46 which was passed in 2002. Both used the same financial mechanisms and had the same goals and programs.

Unfortunately, the timing of dispersal of funds coincided with the crash of the housing market. As a result, some of the projects have not been constructed.[1] Prop 1C authorized $2.85 billion in bonds and as of July 1, 2013, only $1.54 billion have been issued. That means $1.25 billion remains unissued.[2] Based on the latest report on amounts awarded, projects in San Diego County were awarded $139.0 million through June 30, 2011, amounting to 7.3 percent of total funds awarded.[3] It is unclear exactly how much of this funding was specifically allocated to projects in the City of San Diego.

City of San Diego Linkage Fees:
In 2010-2011, the City of San Diego attempted to increase the Housing Impact Fee or "linkage fee" on the construction of non-residential property to finance the development of affordable housing units. The funds are geared toward "affordable housing projects such as loan assistance for restoring deteriorated housing units, financial assistance to first-time homeowners, and housing for the homeless."[4] Originally created in 1989, the fee was reduced by fifty percent as a response to a recession in 1996. The San Diego Housing Commission proposed to raise the linkage fee and establish an automatic adjustment to an index such as the Building Cost Index or the Construction Cost Index. The proposal would have increased development costs creating a disincentive for economic growth in San Diego. With this rationale, SDCTA opposed this proposal. Subsequently, the City Council also rejected the proposal in a 4-4 vote. However, there were recommendations to seek other sources of revenue to fund affordable housing.

In San Diego, affordable housing is financed by in lieu fees and linkage fess. An in lieu fee agreement is a financial arrangement between a government agency and a single sponsor, generally a public agency or non-profit organization. This payment is done instead of a project-specific mitigation. In lieu fees are used to compensate for unavoidable impacts when other alternatives of compensation are not available, practicable, or when the use of an in lieu fee is in the best interest of the public. A linkage fee is a housing impact fee that links the development of commercial property with the construction of affordable housing units. The funds from these fees are used to finance programs such as:

- Inclusionary housing
- Homeownership assistance
- Rental assistance
- Housing enhancement loan program (HELP)
- Shared appreciation loan

[1] Wood, Jeff and Abby Thorne Lyman. "Evaluation of California's Prop 1C TOD Program." Reconnecting America. 28 April 2011. Web: http://reconnectingamerica.org/news-center/half-mile-circles/2011/evaluation-of-california-s-prop-1c-tod-housing-program/
[2] "Authorized and Outstanding General Obligation Bonds, As of July 1, 2013." California State Treasurer. Web: http://www.treasurer.ca.gov/bonds/debt/201307/authorized.pdf
[3] Department of Housing and Community Development. http://www.hcd.ca.gov/fa/06-30-11MapProp1C-1page11-10.pdf
[4] "Increasing the City of San Diego's Housing Impact Fee (Linkage Fee)." San Diego Regional Chamber of Commerce. March 2011. Web: http://www.sdchamber.org/assets/files/Public%20Policy/Linkage%20Fee%20Policy%20Brief3222011.pdf

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Proposal:

The Fee:
SB 391 would levy a $75 fee on "every real estate instrument, paper, or notice required or permitted by law to be recorded."[5] The fee applies to "recording of all real estate instrument, paper, or notice except those recorded in connection with a transfer subject to the imposition of a documentary transfer tax and those expressly exempted from payment of recording fees."[6] Below is a list of some of the documents that the fee would apply to[7]:

- Deeds and grant deeds
- Maps
- Easements
- Construction trust deeds
- Notices of rescission of declaration of default
- Liens
- Assignments of rents
- Release and discharges
- Affidavits

The proponents of SB 391 justify there is a need for additional affordable housing funds because of the recent recession which decreased the earning power of families in California and chronic affordable housing shortages.

The Fund:
The revenues generated by this fee will be allocated to the "California Homes and Jobs Trust Fund" under the jurisdiction of the Department of Housing and Community Development (HCD). The funds are designated for "supporting affordable housing, administering housing programs, and cost of periodic audits, as specified."[8] Programs that fall under these categories include "emergency shelters and rapid rehousing services; transitional and permanent rental housing, including necessary service and operating subsidies; accessibility modifications; and efforts to acquire and rehabilitate foreclosed, vacant or blighted homes." Section 50471. (a)(2) requires administrative costs shall not exceed five percent. Periodic audits are also required. The allocation of revenues from the fund toward affordable housing projects will be at the sole discretion of the legislature and the governor during the budget approval process.

Investment Strategy:
Beginning in Fiscal Year 2015, HCD is required to work with the California Housing Finance Agency, California Tax Credit Allocation Committee and the California Debt Limit Allocation Committee to develop the California Homes and Jobs Trust Fund Investment Strategy (Strategy) and submit it to the legislature. The Strategy is required to be updated every five years following its initial release.

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[5] California Homes and Jobs Act of 2013, S.B. 391, California Senate. (2013).
[6] "California Homes and Jobs Act of 2013." Senate Rules Committee, Office of Senate Floor Analyses. 20 May 2013.
[7] Ibid.
[8] Ibid.

The Strategy is required to include the following:

- Identify statewide needs, goals, objectives and outcomes for housing for a five-year period.
- Promote geographically balanced distribution of funds including consideration of direct allocation to local governments.
- Emphasize investments that serve households that are at or below 60 percent of area median income (AMI).
- Meet the following objectives:
    - Encourage economic development & job creation; meet needs of workforce up to 120 percent of AMI.
    - Identify opportunities for coordination with state departments and agencies.
    - Incentivize use and coordination of nontraditional funding sources.

Prior to submitting the Strategy to the legislature, HCD is required to hold at least four public workshops in different regions of the state.

Quarterly Requirement:
Section 27388.1 (2) (b) stipulates the manner and the timing of the disbursement of funds. After the county recorder deducts all the necessary administrative costs, the funds shall be sent "quarterly to the Department of Housing and Community Development deposit in the California Homes and Jobs Trust Funds…the county shall pay to the Department of Housing and Community Development interest, at the legal rate, on any funds not paid to the Controller within 30 days of a quarter."

Prevailing Wages:
SB 391 requires the contracts on a construction project to meeting "applicable prevailing wage requirements" and that the Department of Industrial Relations monitors and enforce compliance of this obligation.[9] It will be at the department's discretion to set the rate charged which will result in the recovery of the "reasonable and directly related costs of performing and monitoring and enforcement services for public works projects. However, the amount charged by the department shall not exceed one-fourth of 1 percent of the amount of the contract."

Tie to Senate Bill 30
Authors of SB 30 have tied passage of SB 391 to that of SB 30. SB 30 would allow the state to continue exempting homeowners from paying state income taxes on the loan amount written down on their principal residence through a principal reduction or short-sale. Although debt relief was extended at the federal level, the state exemption expired at the end of 2012, so forgiven mortgage debt is still considered taxable state income in California. SB 30 will extend the sunset date in California law to Jan. 1, 2014. Upon its passage, the measure will be retroactive to Jan. 1, 2013.

An amendment was added to SB 30 in the Senate Appropriations Committee that linked enactment of SB 30 to the passage of SB 391.

[9] 50472. (b) (1) California Homes and Jobs Act of 2013, S.B. 391, California Senate. (2013).

Policy Implications:

Local Impact:
The bill imposes a $75 for *every document*, not every transaction. To get refinancing for a primary loan and line of credit, a family would need a deed of trust, subordination, substitution of trustee, and reconveyance.[10] For these four documents, the family would have to pay $300 in fees. The application of the fee will apply to people trying to get out of an underwater mortgage, people trying to refinance, miners, construction workers, and renters and thus negatively impact the local economy. The fee would negatively affect the people that affordable housing should be helping.

While a Strategy is required every five years, there is no guarantee that San Diego will get its "fair share" of the fund allocation as appropriations from the Fund are to be aligned with the Strategy and are also subject to approval by the legislature. It is unclear what the requirements will be for the funding of projects by HCD, or how projects will be evaluated to be included in the Strategy. The distribution of funds is not solely predicated on a "geographically balanced distribution," but rather is to be "promoted" within the Strategy.

Passage of the bill may eliminate the need to increase the City of San Diego's linkage fee as has previously been proposed. The City's Housing Commission has recently completed a study reviewing the fee, and has proposed increases (Table 1).

Table 1: Proposed Update to Linkage Fee

Development Types	Current Fee (per sq. ft.)	Proposed Fee (per sq. ft.)
Office	$1.06	$5.32
Hotel	$0.64	$4.73
Retail	$0.64	$4.96
R&D	$0.80	$4.14
Manufacturing	$0.64	$3.05
Warehouse	$0.27	$2.28

Opponents of the fee argue passage of the bill may be an alternative revenue source that would not harm economic development. It is unclear whether the city council would remove from consideration an increase to the linkage fee should SB 391 become law.

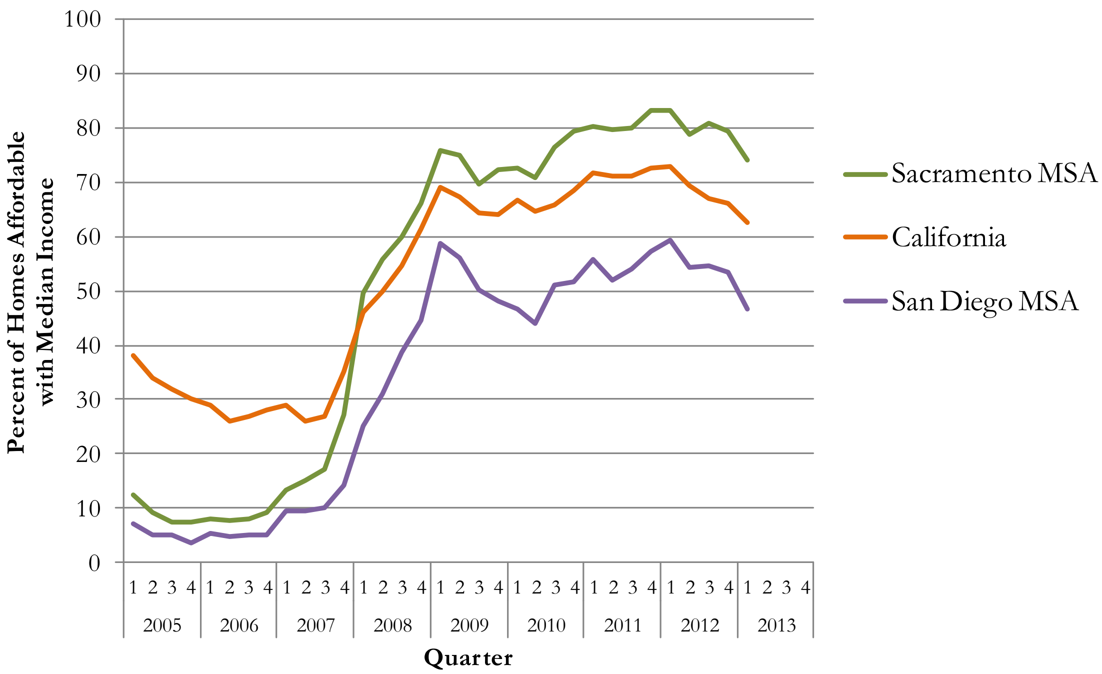
State Impact:
The infusion of taxpayer money will increase the number of affordable housing units in the state. It is unclear that the number of housing units created by the new program will be enough to meet demand in the state.

SB 391 is a fundraising bill.[11] This means the bill is meant to raise money for building affordable housing units while giving the state legislature and the governor the ability to dictate how to allocate the money and strategy. The political process of allocating money may not allocate funds to areas which need more affordable housing units. Some areas of

[10] "SB 391- California Homes and Jobs Act." Nevada County Clerk-Recorder/Registrar of Voters. 2 April 2013.
[11] Stivers, Mark. California Senate Transportation and Housing Committee Consultant. (11 July 2013). Telephone Interview.

California have a greater need for affordable housing because it is more expensive to live in that particular region.

Figure 1: Bakersfield and San Diego Housing Affordability Index Comparison



Source: California Building Industry Association, NAHB, Wells Fargo

Figure 1 is a graph comparing the affordability of housing in San Diego metropolitan statistical area (MSA), Sacramento MSA, and the state of California. This diagram is intended to show the difference of affordability living in a more desired metropolitan area residing in a relatively less desired metropolitan area.

In Figure 1, more people prefer to live in San Diego MSA as opposed to Sacramento MSA. The high desirability to live in San Diego means that the demand for housing exceeds the housing stock. In the second quarter of 2010, only 44 percent of homes were affordable for the median income in the region. In Sacramento, there is a good ratio of housing units that is considered affordable. In the second quarter of 2010, a person on median income could afford over 71 percent of the homes in Bakersfield.

Under SB 391, the Strategy to be adopted every five years may allow for funds to be allocated to areas of need based on geographic distribution. Population may play a factor in the distribution of funds. The City of San Diego accounts for 3.4 percent of the state's population. Assuming annual average revenues from the fee totaling $525 million, $17.9 million would be allocated to San Diego strictly based on population distribution.

Fiscal Impact:

The fee is projected to accrue an average of $525 million per year ranging from $300 million per year in low-volume years to $720 million per year in high-volume years.[12] Revenue from the fee will be used to fund forty-seven positions at the HCD.[13] The estimated cost to fund these positions is $5.4 million annually. These costs will be fully covered by revenues deposited into by the fund. Administrative costs have historically run at five percent of funds allocated to state housing programs.[14] The proposed legislation authorizes administrative costs to be capped at five percent of the funds deposited. Audits will be required to be performed by the Bureau of State Audits beginning two years after the passage of the bill on an annual basis. The Department of Housing and Community Development will be required to provide a report of their expenses of the previous year including whether or not their expenses met a reasonable geographic distribution.

Supporters:

- California Housing Consortium (co-source)
- Housing California (co-source)
- State Treasurer Bill Lockyer
- AARP
- California Apartment Association
- California Building Industry Association
- Cities of Del Mar and Los Angeles
- Community Housing Works
- Counties of Alameda and San Francisco
- Habitat for Humanity California
- Housing Works
- San Diego Community Land Trust
- San Diego Regional Chamber of Commerce
- SEIU California State Council
- United Ways of California

Arguments in Support:

According to the author of the bill, all Californians need an affordable home. For more and more Californians, this has been harder to attain because of tightening credit standards, decreasing accessibility of mortgages, and the housing crisis. California has 130,000 homeless people.[15]

Additionally, this bill will help increase California's business competitiveness. The state needs more affordable housing units so that it can attract talented workers to contribute to

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[12] "SB 391 (DeSaulnier) – California Homes and Jobs Act of 2013." Senate Appropriations Committee Fiscal Summary, Senator Kevin de Leon, Chair. 23 May 2013.
[13] Ibid.
[14] Ibid.
[15] "SB 391 (DeSaulnier) – California Homes and Jobs Act of 2013." Senate Rules Committee, Office of Senate Floor Analyses. 23 May 2013.

economic growth. Supporters claim that SB 391 can create 29,000 jobs with a bulk of the new jobs coming in the construction sector.[16] This projection was written by the authors of the bill. The projection was based on calculations provided by the Department of Housing and Community Development. The projections were based on models that were used to measure the economic impact of the state's infrastructure bonds.[17]

With funding for affordable housing drying up, advocates state there is a need for new funding sources such as SB 391. The bill would "generate an estimated $500 million in investment and leverage an additional $2.78 billion in federal and local funding and bank loans."[18]

Opponents:

- Board of Equalization Member George Runner
- Board of Equalization Member Michelle Steel
- California Credit Union League
- California Land Title Association
- County Recorders' Association of California
- County of Orange
- Marin County Assessor-Recorder-Clerk
- Riverside County Assessor-County Clerk-Recorder
- San Bernardino County Recorder-Clerk
- San Luis Obispo County Clerk-Recorder
- Sonoma County Clerk-Recorder-Assessor
- Howard Jarvis Taxpayers Association
- California Taxpayers Association
- California Association of Realtors
- Western Mining Alliance

Arguments in Opposition:

The Orange County Board of Supervisors bases their opposition on the belief that the bill imposes further financial burden on ordinary California residents.[19] The Association of California Cities- Orange County also opposes this bill on the ground that it "removes local control when it comes to affordable housing."[20] The organization believes that a more effective strategy is to "retain the revenue locally and distribute that revenue locally, to meet the needs of local communities."[21]

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[16] "Support SB 391 (DeSaulnier) the California Homes and Jobs Act of 2013." www.CaliforniaHomesandJobsAct.org. Web: http://www.californiahomesandjobsact.org/wp-content/uploads/2013/02/CHJA-Fact-Sheet.pdf

[17] Ebbink, Benjamin. California Assembly Labor and Employment Committee Consultant. (14 August 2013). Telephone Interview.

[18] Ibid.

[19] SB 391 (DeSaulnier) – California Homes and Jobs Act of 2013." Senate Rules Committee, Office of Senate Floor Analyses. 23 May 2013.

[20] Bartlett, Lisa. "SB 391 – California Homes and Jobs Act of 2013- OPPOSE." Association of California Cities Orange County. 20 March 2013.

[21] Ibid.

Many county recorders oppose this bill because of similar reasoning. According to Inyo County Recorder, "several documents that may need to be recorded after they purchase their home would add to the already substantial expense."[22] The $75 fee would apply to other transactions like refinancing. This hurts the average Californian.

Some opponents of the bill dispute the numbers put forth by proponents of the bill. They believe the numbers are overstated.[23]

[22] Frank, Stephen. "Grimes: Bad Bill of the Day – SB 391 is the California Stamp Act." www.CaliforniaPoliticalNews.com. 6 March 2013. Web: http://capoliticalnews.com/2013/03/06/grimes-bad-bill-of-the-day-sb-391-is-the-california-stamp-act/
[23] Ibid.