

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2501 (Bloom) – As Amended April 5, 2016

**SUBJECT:** Housing: density bonuses

**SUMMARY:** Makes changes to the density bonus law. Specifically, **this bill:**

- 1) Prohibits a local government from conditioning the submission, review, or approval of an application for a density bonus on the preparation of any additional report or study that is not already required in state Density Bonus law.
- 2) Provides that a local government is not required to publicly notice a density bonus application or hold a public hearing on the application.
- 3) Provides that a local government's action on a density bonus application is considered a ministerial act.
- 4) Requires a local government to include the following in its density bonus ordinance in order to provide for the expeditious processing of a density bonus application:
  - a) A procedure and timeline for processing the application;
  - b) A list of all of the documents and information that must be submitted with the application in order for the density bonus to be deemed complete;
  - c) A procedure for notifying the applicant, within no less than 30 days, that the application is complete or if an additional item is required identification of that item;
  - a) A procedure for making a final determination on the application no more than 60 days from the date the application is deemed complete.
- 5) Provides that if a local government fails to notify an applicant within 30 days that an application is complete or additional items are needed then the application is deemed complete.
- 6) Provides that if a local government fails to make a final determination on an application within 60 days from the date it is deemed complete then the application is deemed approved.
- 7) Modifies the circumstance under which a local government can refuse to grant a concession or incentive to a developer to when a concession or incentive "does not reduce the cost of the development" rather than when it "is not required in order" to provide for the affordable housing costs.
- 8) Provides that a local government must bear the burden of proof for the denial of a requested concession or incentive.
- 9) Provides that denial of a requested concession or incentive will be deemed to have exhausted the applicant's existing administrative remedies.

- 10) Clarifies that "density bonus" means the maximum allowable gross residential density.
- 11) Clarifies that a developer that makes an application for a density bonus may elect to accept no increase in the density of a project.
- 12) Clarifies that the definition of "density bonus" includes any incentive or concessions, or wavier or reduction of development standard, provided to the applicant for the production of housing units and child care facilities.
- 13) Provides that the granting of a concession or incentive cannot, in and of its self, require a special study.
- 14) Deletes the requirement that incentives or concessions proposed by a developer or local government result in "identifiable, financially sufficient" and actual cost reductions and instead require the "identifiable" and actual cost reductions.
- 15) Provides that a developer determines if other regulatory incentives or concession proposed by the developer or local government result in "identifiable" and actual cost reductions.
- 16) Provides that a developer or local government cannot propose an increase in density above the percentages allowed in state law, as a regulatory incentive or concession, except that a local government can offer additional density in exchange for additional affordable units.
- 17) Adds "mixed use development" to the definition of "housing development." Mixed use development means developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development and are limited to neighborhood commercial use and to the first floor of the buildings that are two or more stories. Neighborhood commercial means small scale-general or specialty stores that furnish goods and services primarily to residents of the neighborhood.
- 18) Clarifies that each component of any density bonus calculation, including base density and bonus density, resulting in fractional units will be separately rounded up to the next whole number. Finds and declares that this provision is declaratory of existing law.
- 19) Provides that the State Density Bonus Law shall be interpreted liberally in favor of producing the maximum number of total housing units.

**EXISTING LAW:**

- 1) Requires all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.
- 2) Requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:
  - a) Ten percent of the total units for lower income households;
  - b) Five percent of the total units of a housing for very low income households;
  - c) A senior citizen housing development or mobilehome park; and,

- d) Ten percent of the units in a common-interest development (CID) for moderate-income households.
- 3) Requires that the applicant agree to, and the city or county ensure, continued affordability of all low- and very low-income units that qualified the applicant for the density bonus for at least 30 years.
- 4) Requires that the applicant agree to, and the city or county ensure, that the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in a CID are moderate-income and that the units are offered at a cost affordable to moderate-income households.
- 5) Requires the local government to enforce an equity-sharing agreement upon the resale of any moderate-income units that qualified a housing development for a density bonus.
- 6) Allows, upon sale of the unit, the seller to keep the value of any improvements, the down payment, and the seller's proportionate share of appreciation.
- 7) Provides that the local government shall recapture its proportionate share of appreciation, which shall be used within three years for promotion of affordable homeownership.
- 8) Requires the city or county to allow an increase in density of 20% over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for low-income, very low-income, or senior housing, and by five percent for moderate-income housing in a CID.
- 9) Requires that the density bonus for low-, very low-, and moderate-income units increase incrementally according to the following formula:
  - a) For each 1% increase above 10% for low-income units, the density bonus shall increase by 1.5% to a maximum of 35%;
  - b) For each 1% increase above 5% for very low income units, the density bonus shall increase by 2.5% to a maximum of 35%; and,
  - c) For each 1% increase above 10% for moderate-income units, the density bonus shall increase by 1% to a maximum of 35%.
- 10) Requires cities and counties to provide an applicant for a density bonus concessions and incentives based on the number of below market-rate units included in the project as follows:
  - a) One incentive or concession if the project includes at least 10% of the total units for low-income households, 5% for very low-income households, or 10% for moderate-income households in a CID;
  - b) Two incentives or concessions if the project includes at least 20% of the total units for low-income households, 10% for very low-income households, or 20% for moderate-income households in a CID; and

- c) Three incentives or concessions if the project includes at least 30% of the total units for low-income households, 15% for very low-income households, or 30% for moderate-income households in a CID.

11) Specifies that concessions or incentives may include the following:

- a) A reduction in site development standards;
- b) A modification of zoning code requirements or architectural design requirements that exceed the minimum building standards, including a reduction in setbacks, square footage requirements, or parking requirements, that results in identifiable, financially sufficient, and actual cost reductions.
- c) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development, and if such nonresidential uses are compatible with the project; or
- d) Other regulatory incentives or concessions proposed by the developer or the city or county that result in identifiable cost reductions.

12) Requires the local government to grant the incentive or concession requested by the developer unless the city or county makes written findings that:

- a) The concession or incentive is not needed to provide the affordable housing; or
- b) That the concession or incentive would have a specific adverse impact on health and safety, the environment, or an historical resource.

13) Prohibits a city or county from applying any development standard that will have the effect of precluding the construction of housing that qualifies for a density bonus at the densities or with the concessions or incentives required by density bonus law.

14) Allows a developer to request a waiver or reduction of development standards.

15) Specifies that the developer must show that the requested waiver or modification of development standards is necessary to make the housing units economically feasible.

16) Defines "development standard" to include site and construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

17) Requires a city or county to grant either an additional density bonus or and additional concession or incentive when the applicant proposes to include a child care facility in or adjacent to the housing development.

18) Provides a 15% density bonus to the developer of any market-rate housing project who donates land to a city or county that could accommodate housing for very low-income households equal to at least 10 percent of the number of units in the market-rate development. For each one percent increase above the 10 percent the density bonus shall increase by one percent up to a maximum combined density increase of 35 percent.

- 19) Provides that to be eligible for the land donation density bonus, all of the following conditions must be met:
- a) The applicant must donate and transfer the land no later than the approval of the final subdivision map, parcel map or development application;
  - b) The land being donated is suitable to accommodate units affordable to very-low income households in an amount not less than 10% of the number of residential units of the proposed development;
  - c) The transferred land is at least one acre or can accommodate 40 units, has the appropriate general plan designation, is appropriately zoned for affordable housing, can be served by infrastructure, and the land has all the necessary permits and approvals;
  - d) The land is subject to deed restrictions ensuring continued affordability;
  - e) The land is donated to the local agency or to a housing developer approved by the local agency; and
  - f) The transferred land is either within the boundary of or, if the local agency agrees, within 1/4 mile of the proposed development.
- 20) Provides that, upon the developer's request, the local government may not require parking standards greater than the following (the developer may, however request additional parking incentives or concessions):
- a) Zero to one bedrooms: one onsite parking space;
  - b) Two to three bedrooms: two onsite parking spaces; and
  - c) Four or more bedrooms: two and one-half parking spaces.
- 21) Clarifies that local governments may still grant density bonuses greater than what is provided under state law, or lower for developments that do not meet the requirements of state law.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

Density bonus law was originally enacted in 1979, but has been changed numerous times since. The Legislature enacted the density bonus law to help address the affordable housing shortage and to encourage development of more low- and moderate income housing units. Nearly forty years later, the Legislature faces the same challenges. Density bonus is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100% affordable developments as well. In return for inclusion of affordable units in a development, developers are given an increase in density over a city's zoned density and concessions and incentives. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units. Because of numerous amendments over the years, State Density Bonus Law is confusing and subject to interpretation by both developers and cities as to its meaning.

All local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of the cities zoned density in exchange for including extremely low, very low, low, and moderate income housing. Failure to adopt an ordinance does not relieve a local government from complying with state density bonus law. Local governments must grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:

- Ten percent of the total units for lower income households;
- Five percent of the total units of a housing for very low income households;
- A senior citizen housing development or mobilehome park; and,
- Ten percent of the units in a common-interest development (CID) for moderate-income households.

A developer can submit a request to a local government as part of their density bonus application for incentives and concessions. Developers can receive the following number of incentives or concessions:

- One incentive or concession for projects that include at least 10% of the total units for lower income households, at least 5% for very low income households, or at least 10% for moderate income households in a common interest development
- Two incentives or concessions for projects with at least 20% lower income households, at least 10% for very low income households, or at least 20% for moderate income households in common interest developments.
- Three incentives or concessions for projects with at least 30% lower income households, at least 15% for very low income households, or at least 30% for moderate income households in common interest developments.

#### Timeline for reviewing density bonus application:

Existing law does not set a timeline by which a local government must process an application for a density bonus. AB 2501 would require a local government to list in its ordinance the documents and information it requires to process an application. Within 30 days of receiving the application, a local government would be required to notify an applicant if the application is complete or provide a list of items that are required to complete it. Also, a local government must provide a process for making a decision on a density bonus application within 60 days from deeming the application complete. If a local government does not take any action within 60 days of determining that the application is complete then it is deemed approved. Adding a timeline to statute will provide greater certainty to developers and help inform their decisions regarding a development. Without knowing the average time it takes a local government to process a density bonus application it's unclear if these are the appropriate timelines.

#### Electing to accept no density increase:

State law allows a developer a percentage increase in density in return for inclusion of a corresponding amount of very- low, low, moderate income units. The maximum amount of density increase a developer can seek is thirty-five percent. Existing law allows a developer to choose to accept less of a density increase than he or she is entitled under the statute. The statute does not state explicitly that a developer can seek an amount equal to zero above the zoned density however some have interpreted the law to allow this. AB 2501 would explicitly state that a developer can elect to accept no increase in density.

#### Determining the value of concessions and incentives.

Developers are allowed to submit a proposal for specific incentives and concession as part of the application for a density bonus. Local governments are required to grant the concessions or incentives a developer requests unless they make written findings based on substantial evidence that the concession or incentive are not required in order to provide the affordable housing, would have specific adverse health and safety impacts, or have an adverse impact on a property registered historic property that cannot be mitigated. When seeking a reduction in a site development standard or modification of zoning requirements or architectural design requirements, or other regulatory incentives and concessions, existing law requires that reduction or modification result in "identifiable, financially sufficient and actual cost reductions." This language was added to the statute by SB 1818 (Hollingsworth) Chapter 928, Statutes of 2004. According to the Assembly Committee analysis of that bill, "Current law requires local governments to provide applicants for density bonuses with incentives and concessions in addition to a density bonus, but the law does not quantify the value of the incentives and concessions that must be offered. SB 1818 requires that the incentives and concessions "result in identifiable, financially sufficient and actual cost reductions".

According to supporter of this bill, the intent of this language to ensure that the concessions and incentives are financially sufficient to reduce the cost of the development to make the affordable housing units financially feasible. Further, according to supporters of this bill, in some cases local governments interpret this language to require developers to submit pro formas showing the amount of profit they will make on a project. The question becomes who determines whether or not a concession or incentives is "financially sufficient" to make the affordable housing units pencil out. To resolve this dispute, AB 2501 states that the reduction in site development standards or modification of zoning requirements result in identifiable and actual cost reductions as determined by the developer.

Arguments in support: According to the sponsors, Western Center on Law and Poverty and the California Rural Legal Assistance Foundation, "AB 2501 is one piece of a multi-pronged effort by legislators, housing advocates, and other organizations to address California's unfortunate dominance of the list of the country's least-affordable housing markets. By reducing regulatory barriers to housing development, this bill would stretch any increase in state housing funding further and would induce market-rate developers to build below-market units without any public funding. Currently, State Density Bonus Law provides cost-reducing incentives to developers who agree to make a percentage of their homes affordable to low- and moderate-income households. The incentives include reduced parking requirements, increased density, smaller setbacks, and other modified development standards that reduce costs and/or allow a developer to use land more efficiently. Both market-rate and below-market developers have used the law's incentives to add to the state's stock of permanently affordable homes. However, the law has a number of ambiguous provisions that create uncertainty for developers. Additionally, some local

governments have deliberately interpreted the law to discourage developers from accessing its benefits. AB 2501 clarifies a number of these ambiguous provisions in order to increase the law's effectiveness as an incentive to build desperately needed affordable homes. The bill: clearly states the legislature's intent to encourage the development of affordable housing and provide incentives by right to developers, establishes a clear process and deadlines for local governments to approve or deny a density bonus application, clarifies that an applicant for a density bonus need only demonstrate that requested incentives reduce the cost of development, increases certainty regarding the number of additional units available as a result of the density increase, limits the ability of local governments to impose additional requirements to block density bonus projects.

Arguments in opposition:

According to the League of California Cities, "AB 2501 would make significant changes to existing law. It requires a city to take action on the density bonus within 60 days of finding the application complete. This is too short a time frame for those applications for a density bonus that are filed in conjunction with another land use approval (e.g. conditional use permit, subdivision map, etc.). Most applications for a density bonus are made in conjunction with an application for a land use approval that requires a public hearing and takes longer to process. Typically a city will process the granting of the density bonus in conjunction with the processing of the application. A city should not grant a density bonus before it approves the project that the density bonus is attached. "

Staff comments:

Opponents argue that this bill proposes a state preemption of local government's policies and development standards. Density bonus law has been on the books since the late-1970s. The obligation of a local government to adopt a local density bonus ordinance and to comply with the state standard if it does not is existing state law. This bill does not change that requirement.

The intent of the timelines in the bill is to provide certainty to a developer who is submitting a density bonus application by providing a timeline by which the local government needs to deem the application complete and approved. Although it may make sense to provide some timeline, it's not clear if the timelines in the bill are appropriate. The committee may wish to consider requiring a local government to notify a developer within a specified time period that an application is deemed complete but not setting a timeline by which the local government needs to approve the application. For example, in the Permitting Streamlining Act requires a local government to determine if an application for a Subdivision Map Act or zoning change are complete within 30 days.

As discussed above this bill attempts to clarify what was described as the intent in previous legislation [(SB 1818 Hollingsworth) Chapter 928, Statutes of 2004] that reductions in site development standards and concessions and incentives result in cost reductions that are sufficient to support the affordable housing units. This bill would change that language to require the concessions and incentives proposed by the local government or developer to be "identifiable" but not "financially sufficient" as determined by the developer. The committee may wish to delete the language adding "as determined by the developer."

This bill proposes to prohibit a local government from requiring public notice or holding a hearing on a density bonus application, it further requires that acting on the application is a ministerial act. The committee may wish to delete this language.

Committee amendments:

- 1) On page 3, line 16 through 18 delete the following language, "The local government shall not require public notice or hold a public hearing on the application. Acting on the application shall be considered a ministerial act."
- 2) On page 17, line 11 and 12, delete "as determined by the developer."
- 3) On page 17, line 21 and 22, delete "as determined by the developer."

Double referred: If AB 2501 passes this committee, the bill will be referred to the Committee on Local Government

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Apartment Association (co-sponsor)  
California Rural Legal Assistance Foundation (co-sponsor)  
Western Center on Law & Poverty (co-sponsor)  
California Housing Consortium  
Housing California

**Opposition**

American Planning Association California Chapter  
California State Association of Counties  
City of Lakeport  
City of Torrance  
Council of Community Housing Organizations  
League of California Cities

**Analysis Prepared by:** Lisa Engel / H. & C.D. / (961) 319-2085, Lisa Engel / H. & C.D. / (916) 319-2085