Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 1840 (Arambula) – As Amended February 28, 2024

SUBJECT: California Dream for All Program: eligibility

SUMMARY: Provides that an applicant for the California Dream for All Program cannot be disqualified for the program based solely on the applicant's immigration status. Specifically, **this bill**:

1) Provides that an applicant for the California Dream for All Program cannot be disqualified for the program based solely on the applicant's immigration status.

2) Finds and declares that the policy in this bill is necessary within the meaning of Section 1621(d) of Title 8 of the United State Code.

3) Establishes in the California Dream for All Fund a subaccount and requires moneys in the subaccount to include any appropriation from the Legislature from the General Fund or other state fund.

EXISTING LAW:

Federal Law:

1) Provides that a state may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under Federal Law. (Section 1621(d) of Title 8 of the United State Code).

State Law:

1) Establishes the California Dream for All Program at the California Housing Finance Agency (CalHFA) to provide shared appreciation loans to qualified first-time homebuyers for low- and moderate-income homebuyers in the purchase of owner-occupied homes (Health and Safety Code (HSC) 51523)

2) Requires CalHFA to adopt policies, rules, and regulations by resolution of the board of directors of the agency to achieve all of the following:

    a) Provide assistance to meaningfully expand access to homeownership;

    b) Expand opportunities for California households to accumulate wealth for themselves and their families. The agency shall make any necessary program adjustments consistent with the requirements of this law, which may include limiting the percentage of appreciation payable under the program, to ensure that design of the loan product is not an unreasonable impediment to homeowner wealth creation;

c) Maximize the number of households assisted over time by exploring and implementing methods for selling subordinate second mortgages originated pursuant to this program to investors in order to generate additional funding for the program;

d) Establish a revolving, shared appreciation first-time homebuyer program with the goal of eventually providing up to $1 billion per year for first-time homebuyers;

e) Require assistance to be made available in conjunction with first mortgage loan financing provided by the agency, and interest rate buydowns and closing cost assistance for that first mortgage loan financing. Any funds made available for interest rate buydowns shall be made in conjunction with a shared appreciation loan;

f) Require repayments of funds into the program to be used for the ongoing use of the program;

g) Require sustainability for the agency without significantly adversely affecting its borrowing capacity or ability to meet other affordable housing or agency needs; and

h) Require adequate consumer protection and consumer disclosure protections. (HSC 51523)

3) Establishes in the State Treasury the California Dream for All Fund. All moneys in the fund are continuously appropriated to the agency, without regard to fiscal years, for expenditure for the California Dream for All Program and defraying administrative costs of CalHFA. (HSC 51524)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "the social and economic benefits of homeownership should be available to everyone. As such, the California Dream for all program should be available to all. Homeownership is a fundamental tool for wealth building, as it fosters financial stability and provides a tangible investment in one's future. When undocumented individuals are excluded from such programs, they miss out on a crucial method of securing financial security and personal stability for themselves and their families. Limiting access to homeownership assistance programs perpetuates inequality and excludes residents of California from obtaining a significant wealth building opportunity. Expanding access to homeownership is not only important to personal prosperity but also fosters economic stability and promotes a robust local economy. Ensuring universal access by all qualified borrowers to the California Dream for All Program will contribute to the overall success and vitality of California."

California Dream for All Program: The California Dream for All Program, administered by CalHFA, was created through the budget in 2022 to increase opportunities for homeownership among low- and moderate-income homebuyers. The program received a total of $700 million ($500 million in 2022-23, $200 million in 2023-24) in General Fund money.

The program is structured similarly to CalHFA's traditional down payment assistance program, MyHome, with some important differences. MyHome provides up to 6% in downpayment

assistance, while California Dream for All provides up to 20% in downpayment assistance, not to exceed $150,000. Both programs are structured as a secured second mortgage on the home and the buyer must repay the second if the home is sold, or it can be paid back if the buyer refinances. The first mortgage is owned and serviced by a conventional lender. Lenders identify borrowers that meet the programs income qualifications and connect them with CalHFA for assistance. CalHFA does not own or services the first mortgage. In the second round of funding for the CA Dream for all Program, the guidelines were changed to require homebuyers to be the first generation in their families to purchase home. This policy is intended to direct the funding to families who have not benefited from the wealth creation and ancillary benefits that comes from owning a home.

CA Dream For All also has an equity sharing component that requires homebuyers to share a portion of the accumulated equity in their home when they sell. If a homebuyer receives 20% in downpayment assistance they must pay 15% of any appreciation of the home plus the 20% in downpayment assistance when they sell.

Fannie Mae Underwriting Requirements: The structure of CA Dream for All requires the first mortgages associated with the program to meet Fannie Mae underwriting goals. The first mortgages are not owned or serviced by CalHFA, but must be qualified to be serviced and sold to qualified lenders. As it pertains to immigration status, Fannie Mae's standards require a borrower to have a valid Social Security number or Individual Taxpayer Identification Number (ITIN), in addition to meeting existing legal residency and documentation requirements. If the loans associated with CA Dream for All do not meet this standard, the program could not function.

Arguments in Support: According to the California Housing Partnership, "AB 1840 helps accomplish this goal by ensuring that the state's most transformative program to achieve homeownership, the Dream for All Program, is open to all residents regardless of immigration status."
Arguments in Opposition: None on file.

Committee Amendments: Staff recommends the bill be amended to make clear that applicants for CA Dream for All must meet the underwriting requirements of Fannie Mae in order to not be disqualified solely based on immigration status:

> (c) (1) An applicant under the program ***who meets all other requirements for a loan under the program, including, but not limited to, any requirements imposed by the Federal National Mortgage Association or other loan servicer,*** shall not be disqualified solely based on the applicant's immigration status.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
Bravo & Bravo
California Housing Partnership Corporation
California Immigrant Policy Center

Central Valley Immigrant Integration Collaborative
Coalition for Humane Immigrant Rights (CHIRLA)
Episcopal Communities & Services (ECS)
Oasis Legal Services
PICO California
Western Center on Law & Poverty
World Relief Sacramento

Opposition

None on file.

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

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 1893 (Wicks) – As Amended April 1, 2024

SUBJECT: Housing Accountability Act: housing disapprovals: required local findings

SUMMARY: Revises the "builder's remedy" to reduce the affordability required to qualify, set parameters around the density and objective standards that apply to a housing development project, and make other changes. Specifically, **this bill**:

1) Defines "housing for lower income households" to mean a housing development project in which 100% of the units, excluding managers' units, are dedicated to lower income households, as defined.

2) Defines "housing for mixed-income households" to mean a housing development project in which at least 10% of the units are dedicated to lower income households.

3) Prohibits a local agency from disproving a housing development where 100% of the units are for very low-, low-, or moderate-income households, or 10% of the units are for lower income households, or an emergency shelter, if the local agency fails to adopt a compliant housing element, unless it makes written findings, based upon a preponderance of the evidence in the record, that the housing development fails to meet any of the following objective standards:

    a) The site is designated by the general plan or located in a zone where either of the following occurs:

        i) Housing, retail, office, or parking are permissible uses; or

        ii) The site is designated or zoned for agricultural uses and at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses, as defined in existing law.

    b) The project is not on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use, as defined in existing law.

    c) The project has a density such that the number of units, as calculated before the application of a density bonus, does not exceed the greatest of the following, as applicable:

        i) For sites located within high or highest resource census tracts, as identified by the latest edition of the "CTCAC/HCD Opportunity Map" published by the California Tax Credit Allocation Committee (TCAC) and the Department of Housing and Community Development (HCD):

            I) Fifty percent greater than the maximum density deemed appropriate to accommodate lower income housing for that jurisdiction as specified in Housing Element Law; or

II) Three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater. For purposes of this subparagraph, the allowed density shall be the amount allowed prior to the award of any eligible density bonus, pursuant to existing law.

ii) For sites that are not located within high or highest resource census tracts, as identified by the latest edition of the "CTCAC/HCD Opportunity Map:"

I) The maximum density deemed appropriate to accommodate lower income housing for jurisdiction, as specified Housing Element Law; or

II) Twice the density allowed by the general plan, zoning ordinance, or state law, whichever is greater. For purposes of this subparagraph, the allowed density shall be the amount allowed prior to the award of any eligible density bonus.

d) For sites located within one-half mile of a major transit stop, an unspecified percentage of additional density more than the amount allowable in the bill, as applicable.

e) Provides that it is the intent of the Legislature to amend the bill to include objective standards for floor area ratio and similar issues that affect development capacity.

4) Provides, for objective development standards not included elsewhere in 3) above, that a local agency may require the housing development project to comply with objective development standards that apply in the closest zone in the local agency that allows multifamily residential use at the residential density allowed. If no zone exists that allows the residential density determined, as specified, the applicable objective standards shall be those for the zone that allows the greatest density within the city, county, or city and county.

5) Provides that, for housing development project applications that are deemed complete on or before April 1, 2024, the provisions of 3) cannot be used to disapprove or conditionally approve the housing development project, even if the housing development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation, as specified in any element of the general plan as it existed on the date the application was deemed complete. A development proponent may choose to be subject to the provisions of 3) that were in place on the date the preliminary application was submitted.

6) Provides that a builder's remedy housing development project applicant is not precluded from seeking a density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios.

7) Defines "objective development standards" to mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. Provides that a developer is subject to the obligations imposed under the California Building Code. Provides that, in the event that objective standards are mutually inconsistent, a development shall be deemed consistent with the objective standards if the development is consistent with the standards set forth in the general plan.

8) Provides that, for a local agency that has not adopted a revised housing element that is in substantial compliance with Housing Element Law, the following shall apply with regard to the objective standards for a housing development project:

    a) In no case may a local agency apply any objective development standard to the housing development project that will have the effect of physically precluding the construction of a development at the densities permitted or that will result in an increase in actual costs.

    b) The local agency shall bear the burden of proof that any objective development standard applied to the housing development project will not have the effect of physically precluding the construction of a development at the densities permitted or that will not result in an increase in actual costs.

    c) For a housing development project submitted to the local agency pursuant to AB 2011 (Wicks), Chapter 647, Statutes of 2022, if the housing development project complies with the residential density standards in the bill, it shall be deemed to be in compliance with the residential density standards contained in AB 2011 (Wicks).

    d) For a housing development project submitted to the local agency pursuant to SB 423 (Wiener), Chapter, Statutes of 2023, if the housing development project complies with the residential density standards and the objective development standards specified in this bill, it shall be deemed to comply with the objective zoning standards, objective subdivision standards, and objective design review standards contained in SB 423 (Wiener).

EXISTING LAW:

1) Defines "urban uses" to mean any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. (Government Code (GOV) Section 65912.101)

2) Defines "dedicated to industrial use" to mean any of the following:

    a) The square footage is currently being used as an industrial use;

    b) The most recently permitted use of the square footage is an industrial use; or

    c) The site was designated for industrial use in the latest version of a local government's general plan adopted before January 1, 2022. (GOV 65912.101)

3) Under the Housing Accountability Act (HAA), prohibits a local agency from disproving a housing development project, that includes either 20% very low- or low-income housing, 100% moderate-income housing, an emergency shelter, or farmworker housing, or conditioning the approval of the housing development in a manner that renders the housing development infeasible for very low-, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based on a preponderance of the evidence in the record, as to one of the following:

a) The jurisdiction has adopted a housing element that has been revised consistent with existing law, that is in substantial compliance with Housing Element Law, and the jurisdiction has met or exceed its share of the housing needs allocation (RHNA) for the planning period, for the income category proposed for the housing development project, if the disapproval or conditional approval is not based on housing discrimination, as specified in existing law;

b) If the housing development has a mix of income categories and the jurisdiction has not met or exceeded its share of RHNA, then a jurisdiction shall not disprove or conditionally approve the housing development project;

c) The jurisdiction has met or exceeded the need for emergency shelter as identified in its housing element, as specified;

d) The housing development project or emergency shelter would have a specific, adverse impact on the public health or safety and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. For purposes of this provision, defines a "specific, adverse impact" to mean a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety: inconsistency with the zoning ordinance or general plan land use designation and the eligibility to claim a welfare exemption under existing law;

e) Denial of the housing development project or imposition of conditions is required to comply with specific state or federal law, and there is no feasible method to comply without rending the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible;

f) The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project;

g) The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as it existed on the date the application was deemed complete and the jurisdiction has timely adopted a revised housing element that is in substantial compliance with Housing Element Law. For purposes of this provision, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

    i) Provides that this provision cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low-, low-, or moderate-income households in the jurisdiction's housing element, and consistent

with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

ii) Provides that if a local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of RHNA for all income levels, then this provision shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of RHNA for the very low-, low-, and moderate-income categories.

iii) Provides that, if a local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, then this provision shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. Provides that in any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of Housing Element Law. (GOV 65589.5(d))

4) Provides that nothing in the HAA shall be construed to relieve a local agency from complying with the congestion management program required by specified law, the California Coastal Act of 1976, making one or more of the findings required pursuant to Section 21081 of the Public Resources Code, or otherwise complying with the California Environmental Quality Act. (GOV 65589.5(e))

5) Provides that, except for requirements related to the preliminary application, a local agency is not prohibited from requiring the housing development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of RHNA. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development. (GOV 65589.5)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, **"**It is going to take all of us to solve our housing crisis, and AB 1893 will require all cities and counties to be a part of the solution. It does so by modernizing the builder's remedy to make it clear, objective, and easily usable. A functional builder's remedy will help local governments to become complaint with housing element law.

Where they do not, it will directly facilitate the development of housing at all affordability levels. The message to local jurisdictions is clear — when it comes to housing policy, the days of shirking your responsibility to your neighbors are over."

Housing Accountability Act (HAA)/Builder's Remedy: In 1982, the Legislature enacted the Housing Accountability Act (HAA). The purpose of the HAA is to help ensure that a city does not reject or make infeasible housing development projects that contribute to meeting the housing need determined pursuant to the Housing Element Law without a thorough analysis of the economic, social, and environmental effects of the action and without complying with the HAA. The HAA restricts a city's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA does not preclude a locality from imposing developer fees necessary to provide public services or requiring a housing development project to comply with objective standards, conditions, and policies appropriate to the locality's share of the RHNA.

One constraint within the HAA on local governments' authority to disprove housing, which has gained recent attention, is the "Builder's Remedy." The Builder's Remedy prohibits a local government from denying a housing development that includes 20% lower-income housing or 100% moderate-income housing that does not conform to the local government's underlying zoning, if the local government has not adopted a compliant housing element. A number of developers have attempted to use the Builder's Remedy in the last few years.

For example, the City of La Cañada Flintridge failed to adopt a compliant housing element. Using the Builder's Remedy, a developer proposed a project for 80 units of affordable housing on church-owned land that was not zoned for housing or for density to accommodate the proposed project. The City denied the project and the developer sued. The City of La Cañada Flintridge argued they were not required to process an application under the HAA to approve a housing development that did not comply with their underlying zoning because they had "self-certified" their housing element by adopting a housing element, even though it was not certified as compliant by HCD. The court ruled that the city was not in compliance despite the fact that they had "self-certified" and found the housing element the city adopted out of compliance with Housing Element Law for various reasons.

Under existing law, as long as a developer includes 20% of the units in a development for lower income households or 100% for moderate income and the local agency does not have a substantially compliant housing element, a development must be approved. The development is not required to meet the underlying zoning, meaning a development can be proposed on a site regardless of the designated use or density. Anecdotally, it appears that although developers are utilizing Builder's Remedy, few projects are going forward as proposed because developments are still subject to the California Environmental Quality Act (CEQA), but rather, the law is being used as a leverage point to get local agencies to approve developments.

This bill proposes to set parameters around the density, underlying zoning, and objective standards that a development must meet in order to qualify for the Builder's Remedy. It would also reduce the amount of affordable housing a development must include to qualify.

Underlying Zoning: Under existing law, inconsistency with the zoning or general plan cannot be used as a reason to deny a Builder's Remedy project. This bill would set parameters around where the Builder's Remedy could be used. This bill would only allow a development to qualify on a site where housing, retail, office, or parking are permissible uses. A site could be zoned for

agricultural use, as long as 75% of the perimeter adjoins site that are for an urban use. Developments that are on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use would no longer be eligible to utilize the Builder's Remedy.

Density: This bill would set density limits on projects that can utilize Builder's Remedy. For sites in more affluent areas within the high or highest resources census tracts as determined in maps developed by TCAC as part of the Low Income Housing Tax Credit program, the developer can choose between a density that is twice the "Mullin Density" to accommodate housing for lower income households, or three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater.

For a site that is not in the high or highest resource census tracts, the allowable density would be either the Mullin Density or twice the density in the general plan, zoning ordinance, or state law, whichever is greater.

For sites located one-half mile from a major transit stop, the allowable density would be an unspecified multiplier to the two density categories described above.

Finally, the bill references the intent of the Legislature include objective standards for floor area ratio and similar issues that affect development capacity.

Grandfathering Existing Builder's Remedy Projects: To address those developments that have already submitted a Builder's Remedy application under the existing rules, this bill would allow those developers that have applications deemed complete on our after April 1, 2024, to continue under the existing law unless they choose to use the standards created by this bill.

Density Bonus Law: Density bonus law allows a developer to receive additional density on a development in return for include a percentage of affordable housing. The more affordable housing included, the higher the density increase. In addition, a developer can request waivers of building standards and concessions that make the inclusion of the affordable housing and density feasible. This bill specifies that a developer with a Builder's Remedy project could seek the benefits of a density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios. It is unclear if the developer would be required to provide additional affordable housing beyond what is required in this bill to receive the benefits of the density bonus law.

Affordability: To access Builder's Remedy a developer must include 20% of the units for lower income households or 100% for moderate-income households. This bill proposes to change that requirement. For developments less than 10 units, there would be no affordability requirement. For all other developments, the percentage would be reduced from 20% for lower income households to 10% for lower income households. Lower income households are defined as those households that make 80% of area median income or less.

Streamlining: A development utilizing the Builder's Remedy is subject to CEQA. This bill would allow a development that conforms to the density and objective standards to use an existing streamlining process – either AB 2011 (Wicks), Chapter 647, Statutes of 2022, or SB 423 (Wiener), Chapter 778, Statutes of 2023. To qualify for streamlining in either of these processes, a developer would have to meet the affordability requirements, which are higher in both AB 2011 and SB 423, than in this bill. In addition, all of the limitations on location in AB

2011 and SB 423 would apply. Both exempt sensitive environmental sites and have some exemptions in the coastal zone. If a development does not use one of these streamlining options, it would remain subject to CEQA.

Arguments in Support: According to the sponsor, the Attorney General, "AB 1893 would clarify and modernize the builder's remedy by providing clear, objective standards for builder's remedy projects, including density standards and project location requirements. With these updates, the builder's remedy will be a more effective enforcement tool because local governments will face greater certainty of swift consequences when they do not adopt a timely and substantially compliant housing element. AB 1893 would also align the builder's remedy with laws and policies that have emerged in the more than 30 years since the builder's remedy was enacted, including sustainable communities strategies like promoting development in urban infill and near transit centers, and promoting higher density housing that is more affordable than single-family homes."

***Arguments in Opposition*:** A few organizations are opposed to this bill because it overrides local control and reduces the affordable housing requirement necessary to qualify for builder's remedy.

Committee Amendments: This bill substantially reduces the affordable housing requirement necessary to using Builder's Remedy from 20% for lower income households to 10% for lower income households. The committee may wish to consider, in light of the increase in density allowed over the allowable density in the general plan and zoning documents, if more affordable housing should be required. The committee may wish to consider changing the affordability from 10% affordable to lower income households to 10% for very low-income households.

***Related Legislation*:**

AB 1886 (Alvarez) of the current legislative session clarifies that a housing element is substantially compliant with Housing Element Law, when both a local agency adopts the housing element and HCD or a court finds it in compliance, for purposes of the Builder's Remedy. This bill recently passed out of this committee on a vote of 7-0 and is currently pending a hearing in the Assembly Committee on Local Government.

AB 2023 (Quirk-Silva) of the current legislative session, among other changes, would create a rebuttable presumption of invalidity in any legal action challenging a local government's action or failure to act if HCD finds that the action or failure to act does not substantially comply with the local government's adopted housing element or housing element obligations. This bill recently passed out of this committee on a vote of 6-0 and is currently pending a hearing in the Assembly Committee on Local Government.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

State of California Attorney General (Sponsor)
BuildCasa

California Apartment Association
California Community Builders
California YIMBY
Circulate San Diego
CivicWell
Fieldstead and Company, INC.
Habitat for Humanity California
Housing Action Coalition
Housing Trust Silicon Valley
LeadingAge California
Sand Hill Property Company
SPUR
The Two Hundred

Support If Amended

Council of Infill Builders

Opposition

Livable California
Save Lafayette

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

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 1932 (Ward) – As Amended April 3, 2024

SUBJECT: Personal income tax: mortgage interest deduction

SUMMARY: Disallows the mortgage interest deduction (MID) for second homes and deposits revenue saved into the Housing, Homeownership, and Homelessness Prevention Response Fund (Fund), to be allocated to specified housing programs. Specifically, **this bill**:

1) Disallows the MID on acquisition indebtedness with respect to a qualified residence other than a principal residence.

2) Requires the Franchise Tax Board (FTB), no later than June 1, 2025 and in consultation with the Department of Finance (DOF), to estimate the amount of revenue that would have resulted if the modifications made with respect to the calculation of taxable income by this bill had applied to taxable years beginning on or after January 1, 2024, and before January 1, 2025, and notify the Controller of that amount.

3) Requires FTB, no later than June 1, 2026 and annually thereafter, and in consultation with DOF, to estimate the amount of additional revenue resulting from the modifications made with respect to the calculation of taxable income by this bill for the taxable years beginning on or after January 1 of the calendar year immediately preceding the year in which the estimate is made and before January 1 of the calendar year in which the estimate is made and notify the Controller of that amount.

4) Establishes the Fund in the State Treasury.

5) Requires the Controller, upon receiving the notifications from the FTB under 2) and 3), to transfer an amount, equal to the amount estimated by the FTB in those notifications, from the General Fund to the Fund.

6) Provides that, notwithstanding specified law, moneys in the Fund are continuously appropriated, without regard to fiscal year, as follows:

    a) Fifty percent of the moneys must be used in accordance with the Multifamily Housing Program, as specified;

    b) Twenty-five percent of the moneys must be used for supporting homeownership opportunities for first-time homebuyers; and

    c) Twenty-five percent of the moneys must be used for distribution to local public housing authorities to provide housing navigation services and landlord incentives for housing voucher recipients.

EXISTING LAW:

1) Federal Internal Revenue Service (IRS) law allows a taxpayer to deduct the mortgage interest paid on up to $750,000 in mortgage debt on a “qualified residence” for taxable years

2018 through 2025, for mortgages entered into after December 15, 2017. On January 1, 2026, the limit rises to up to $1 million in mortgage debt without regard to when the mortgage was incurred. State law allows a deduction for up to $1 million in mortgage debt on a qualified residence. (Federal Internal Revenue Code (IRC) Section 163(h)(3)(F) and 163(h)(3)(B))

2) Federal IRS law defines a "qualified residence" as:

   a) A principal residence; or

   b) A second residence that is either not rented out for any portion of the year or a second home that you use for a portion of the year. If a second residence is rented out for a portion of the year a taxpayer must use this home more than 14 days or more than 10% of the number of days during the year that the residence is rented at a fair rental, whichever is longer. (IRC 163(h)(4)(A)(i)(II))

FISCAL EFFECT: Unknown. 2/3 vote.

COMMENTS:

Author's Statement: According to the author, "California is undergoing an unprecedented housing affordability crisis with nearly 70% of low- and very low-income households spending more than half of their income on housing. The crisis has contributed to a growing population of people experiencing homelessness, increased pressure on local public safety nets, and the outward migration of thousands of long-time California residents. Despite this, the state's largest housing program is the mortgage interest deduction. We invest $3.5 billion a year in individuals who have already purchased homes while over half of our state is made up of renters. In addition, we invest approximately $200 million to subsidize owners with the means to purchase not one, but two homes. In the face of our severe housing crisis, and a budget shortfall which has led the Governor to propose eliminating $1.2 billion in housing programs, it is necessary to reevaluate this wasteful tax expenditure and redirect the revenues currently subsidizing those with second homes to address this crisis. An additional $200 million per year for housing programs to build affordable housing, promote first-time homebuyer opportunities, and boost housing voucher utilization will allow us to make crucial investments for the long term. We should ensure those without a home in our state receive one before the state helps subsidize those well enough to purchase a second."

California's Housing Crisis: California is in the midst of a severe housing crisis. Over two-thirds of low-income renters are paying more than 30% of their income toward housing, a "rent burden" that means they have to sacrifice other essentials such as food, transportation, and health care.[1] In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became homeless for the first time.[2] The crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership's (CHP) Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 687,000 available and affordable rental units in the state. Over three-quarters of the

[1] https://chpc.net/housingneeds/
[2] https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html

state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50% of their income toward rent each month. CHP estimates that the state needs an additional 1.3 million housing units affordable to very low-income Californians to eliminate the shortfall.[3] By contrast, production in the past decade has been under 100,000 housing units per year – including less than 10,000 units of affordable housing per year.[4]

***Mortgage Interest Deduction**:* The largest permanent investment the state makes in housing is through the MID – a deduction that disproportionately benefits those with higher incomes and larger mortgages.[5] State law allows a taxpayer to deduct interest on up to $1 million in acquisition indebtedness on a "qualified interest." A qualified interest includes a primary residence and a second residence. To qualify, a second residence may be rented out for a portion of the year but a taxpayer must use the home more than 14 days or more than 10% of the number of days during the year that the residence is rented at a fair rental rate, whichever is longer. Non-qualifying rentals are not subject to the MID as landlords have access to other business tax deductions and rental depreciation mechanisms that impact their tax owed on those properties.

This bill would disallow the state MID on second homes for taxable years beginning in 2025, and would utilize the savings from this disallowance to permanently fund three key housing and homeownership priorities:

- The state's flagship affordable housing finance program, the Multifamily Housing Program, would receive 50% of the savings annually, to bolster the state's severe lack of affordable housing available to low-income renters and people experiencing homelessness;

- Programming to support first-time homebuyer opportunities would receive 25% of the savings appropriated annually, so that the state's resources are supporting first-time buyers rather than providing tax benefits to those able to purchase not just a first but a second home; and

- The final 25% would be allocated to public housing authorities to use for housing navigation services, landlord incentive payments, holding deposits, and other supports to ensure recipients of federal housing vouchers can successfully locate and lease a unit. According to HUD data from 2023, the average annual income of a California-based household receiving a housing choice voucher is $21,521.[6]

Filers could continue to claim a MID for a primary and second home on their federal taxes, for mortgages up to a cumulative total of $750,000, until Congress decides how to approach the upcoming expiration of the tax code changes made in the 2017 Tax Cuts and Jobs Act (TCJA). If no changes are made to this provision or the TCJA sunsets on January 1, 2026, the federal MID would revert back to allowing a deduction on up to $1 million in acquisition indebtedness for a primary and second home.

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[3] https://chpc.net/housingneeds/
[4] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml
[5] https://chpc.net/wp-content/uploads/2024/03/California-Affordable-Housing-Needs-Report-2024-1.pdf
[6] https://www.huduser.gov/portal/datasets/assthsg.html

Who Benefits from MID? The MID is only available to taxpayers who itemize their deductions. Those who take the standard deduction receive no benefit, even if they pay interest on a mortgage. The majority of taxpayers who benefit from the MID make more than $100,000 per year. In 2020, 90% of the federal MID expenditure went to homeowners with incomes above $100,000, and 62.8% went to homeowners with incomes over $200,000 per year.[7]

The Congressional Research Service analyzed the federal MID in 2020 and noted the following:

> The value of the [mortgage interest] deduction generally increases with a taxpayer's income. There are two primary reasons for this. First, the value of the mortgage interest deduction, like all deductions, depends on an individual's marginal tax rate. For example, an individual in the 25% marginal tax bracket, paying $10,000 in mortgage interest, would realize a reduction in taxes of $2,500 ($10,000 multiplied by 25%). In comparison, for someone in the 35% tax bracket the reduction in taxes for deducting the identical amount of interest would be $3,500 ($10,000 multiplied by 35%). Second, higher-income individuals tend to purchase more expensive homes, which results in larger mortgage interest payments, and hence, a larger deduction.[8]

Thus, the MID itself is a benefit that is poorly targeted to assist lower income families purchase homes, instead benefiting wealthier individuals who purchase larger or more expensive homes. The allowance of a MID not just for a primary but also for a secondary or vacation home further exacerbates this inequity. According to the FTB, the estimated impact of the vacation home MID on the General Fund averages roughly $200 million every year, and tax filers that take a deduction on a second home receive approximately $1,100 in tax benefit per filer. According to FTB, under current law the estimated average second home deduction is approximately $11,500. Applying an average state tax rate of 9% reduces the tax owed by the taxpayer by approximately $1,100. Should the second home MID be disallowed, the average second home owner would owe about $1,100 more in tax per year.

Renter's Tax Credit: The state renter's tax credit, in stark contrast to the MID, has been frozen at a sparse $60 for single filers and $120 for joint filers for over four decades – and has an income cap, which the MID notably does not have. It is also nonrefundable, meaning any excess after a taxpayer's tax owed is reduced to $0 does not accrue to the taxpayer. The income limit for single filers or filers who are married filing separately to claim the renter's credit is $50,746, and for married filers filing jointly, heads of households, or widowers, the income limit is $101,492.[9]

It would take over 18 years for a single filer and over nine years for a joint filer receiving a yearly renter tax credit to net even one year of the $1,100 housing tax benefit the average second home owner receives via the MID.

Budget Challenges: Although final revenues are not in, the Legislative Analyst's Office (LAO) estimates that the state is facing a $58 billion budget deficit. The Governor's January budget proposes to cut $1.2 billion in existing budget commitments to affordable housing programs, including eliminating $250 million from MHP, a core program necessary to fund deeply income-targeted affordable multi-family and supportive housing. Over 95% of units assisted by MHP in

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[7] https://bipartisanpolicy.org/explainer/is-it-time-for-congress-to-reconsider-the-mortgage-interest-deduction/
[8] https://crsreports.congress.gov/product/pdf/R/R43385
[9] https://www.ftb.ca.gov/file/personal/credits/nonrefundable-renters-credit.html

recent years have been targeted to families making 60% of their area's median income or below.[10] The January budget also proposes to eliminate $152.5 million for the CalHome program, which makes grants to local public agencies and nonprofits for first-time homebuyer and housing rehabilitation assistance, homebuyer counseling, and technical assistance activities to enable low- and very-low-income individuals to become or remain homeowners. The last voter-approved housing bond, Proposition 1 from 2018, provided $3 billion for various affordable housing programs, the vast majority of which will be exhausted by this year.

LAO Recommendation to Eliminate the Second Home MID: The LAO recently published an analysis of tax policy changes in the Governor's January Budget proposal, given the budget challenge facing the state this year. The following is an excerpt related to the MID:

> *Better Target the Mortgage Interest Deduction.* Homeowners can reduce their taxable income by deducting the costs of their mortgage interest payments. California law allows taxpayers to deduct interest costs related to up to $1.1 million in mortgage debt. The mortgage interest deduction generally is an inefficient and inequitable way of achieving the policy's primary goal: promoting homeownership. The vast majority of the $3.5 billion in statewide tax savings from the deduction go to higher income households who, for the most part, do not require assistance to afford a home. This is because taxpayers must be able to itemize their deductions to claim the mortgage interest deduction, something which is much more common among higher income taxpayers. One option to better target the mortgage interest deduction is to convert it to a tax credit, which would be available to a broader range of taxpayers. Such a conversion could be structured to also reduce the overall revenue loss to the state. For example, converting the mortgage interest deduction to a credit equal to two percent of mortgage interest paid on up to $1 million of debt likely would increase income tax revenue by $1 billion or more per year.
>
> *Eliminate Mortgage Interest Deduction for Second Homes.* The mortgage interest deduction is not limited to interest paid on a taxpayer's primary residence. Taxpayers also can deduct interest paid for vacation homes and other second homes, as long as they are not used to generate rental income. This policy provides little benefit in the way of promoting homeownership or improving housing affordability and primarily benefits higher-income taxpayers. Eliminating the mortgage interest deduction for second homes could increase income tax revenue by $100 million to $150 million per year.[11]

Arguments in Support: According to the California Housing Partnership, "The largest investment the state makes in housing is the MID, yet it promotes no public policy purpose and accrues disproportionately to high-income earners who do not need housing assistance. The vacation home deduction alone costs the state more than $200 million per year. This revenue is better utilized to meet California's unmet housing needs, especially the development of homes affordable to low-income families and persons experiencing homelessness. AB 1932 will align our funding with our priorities by eliminating the vacation home MID and permanently investing resources saved in programs that create housing stability and homeownership opportunities, including the Multifamily Housing Program, first-time homebuyer assistance, and boosting housing voucher utilization."

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[10] https://lao.ca.gov/handouts/socservices/2024/Housing-Augmentation-Updates-031124.pdf
[11] https://lao.ca.gov/LAOEconTax/Article/Detail/797

Arguments in Opposition: According to the California Association of Realtors, the California Mortgage Bankers Association, and the California Taxpayers Association, "This tax increase unfairly impacts California homeowners who have scrimped and saved for years and are now eligible to use this provision in order to better the lives of their families. Many hardworking homeowners have relied on this provision in the law to make a major financial decision in the purchase of a qualifying home and enacting this proposal would only exacerbate the effects of federal tax laws enacted under the prior federal Administration, which has hurt California families. AB 1932 would negatively impact families who are already struggling with the high cost of essential services required in securing a mortgage, such as the rising cost of insurance."

Related Legislation:

AB 1905 (Chiu) of 2020 would have disallowed the MID on second homes and increased the amount of ongoing funding the state would have provided to address homelessness. That bill died pending a vote in this committee.

AB 71 (Chiu) of 2017 would have disallowed the MID on second homes, increased the state Low-Income Housing Tax Credit (LIHTC) Program by $300 million, and made changes to the LIHTC. That bill died pending a vote on the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

All Home, a Project of Tides Center
Brilliant Corners
California Housing Partnership Corporation
Community Corporation of Santa Monica
Homes & Hope
Housing California
MidPen Housing Corporation
Nonprofit Housing Association of Northern California
Resources for Community Development
Sacramento Housing Alliance
Southern California Association of Non-profit Housing
The United Way of Greater Los Angeles

Opposition

California Association of Realtors
California Mortgage Bankers Association
California Taxpayers Association

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2117 (Joe Patterson) – As Introduced February 5, 2024

SUBJECT: Development permit expirations: actions or proceedings

SUMMARY: Excludes time spent in litigation from the timeframe in which a housing permit or other project approval can expire. Specifically, **this bill**:

1) Defines the time that an action is "pending" as the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is satisfied sooner.

2) Defines "permit" as a variance, conditional use permit, or any other development permit.

3) Specifies that the period of time before a permit or project approval issued by a city, county, or state agency expires shall not include the period of time during which an action or proceeding involving the approval or conditional approval of the permit or project approval is or was pending.

EXISTING LAW:

1) Recognizes that there is a housing crisis in California, affirms the importance of reducing delays in completing housing projects, and acknowledges that legal challenges against decisions made by cities or counties can discourage project applicants from proceeding with projects, even if the necessary approvals are in place. (Government Code (GOV) Section 65009)

2) Establishes procedures through which someone can challenge a decision related to a proposed development in court, including limiting that legal challenge to issues that were brought up at the public hearing or in written correspondence prior to the hearing. (GOV 65009)

3) Establishes a 90 day timeframe from the time of decision by a legislative body in which legal actions or proceedings related to the legislative body's decision surrounding development agreements, variances, conditional use permits, or any other permit can be brought forward. After that, no further legal actions or proceedings can be brought against the decision. (GOV 65009)

4) Mandates that every permit shall remain valid if work on the site authorized begins within 12 months of permit issuance, unless the permittee has abandoned the work. (Health and Safety Code (HSC) 18938.6)

5) Allows a permittee to request one or more permit extensions of not more than 180 days per extension, to be granted by the local building official. (HSC 18938.6)

6) Authorizes local governments to adopt local amendments to the California Building Standards Code. (HSC 18941.5)

7) Generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. (Public Resources Code (PRC) Section 21000)

8) Exempts certain housing projects from the provisions of CEQA by subjecting them to a streamlined and ministerial approvals process. (GOV 65852.2, 65852.22, 65852.23, and 65852.26, 65913.4, 65912.100-65912.140, 65913.16)

9) Provides for a streamlined, ministerial approvals process (SB 423) for housing developments in jurisdictions that are not on track to meet their Regional Housing Needs Assessment (RHNA). For projects approved via that streamlined, ministerial pathway, the local government approval remains valid for three years from the date of final judgment upholding the approval. If litigation is filed on a project approved under SB 423 while the developer is requesting a modification request, the original project approval shall remain valid and shall be further extended during the pendency of the litigation. (GOV 65913.4)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Assembly Bill 2117 is a simple bill. All it does is ensures that local and state permits do not expire on an approved project while a CEQA challenge is taking place."

Permit and Entitlement Expiration: California's Building Standards Codes (CBSC) are published in their entirety every three years. Intervening code adoption cycles produce supplement pages half-way (18 months) into each triennial period. Amendments to California's building standards are subject to a lengthy and transparent public participation process throughout each code adoption cycle. There are a few exemptions which allow a local governing body, city, or county to modify state building standards. A local governing body, city, or county can adopt an ordinance or a resolution in a public meeting that finds that a local building standard must be modified from the state building standard because of local climatic, geological or topographical conditions, and must file that ordinance with the CBSC. The CBSC reviews the findings of the ordinance to determine if the local governing body followed the correct procedure.

A developer is subject to the state's building standards and any local changes made through an ordinance to the state's building standards at the time the permit is issued. Unless there is a local ordinance setting forth different local timelines, building permits are deemed expired twelve months after issuance if the work has not begun or if the permittee has suspended or abandoned work any time after the permit is issued. Building officials have discretion to grant one or more extensions for time periods of not more than 180 days if the permittee requests an extension and provides a written demonstrable justifiable cause for the extension. Any subsequent building permits are subject to building standards in place at the time the permit is issued.

Local governments set their own timelines for planning approval and entitlement expiration through local Municipal Codes, unless specific timelines are set for certain housing projects via

state legislation, as is the case in SB 423 (Wiener, Chapter 778, Statutes of 2023). There is typically language in the local Municipal Code stating that a certain action must be taken (e.g. site or building permit issued or tentative map approved) within a period of time or the approval will expire or require an extension of time from the authorizing body. The local policies and procedures surrounding the granting of these extensions vary from jurisdiction to jurisdiction.

SB 423, among other provisions, provides for a streamlined, ministerial approval for housing developments in jurisdictions that are not on track to meet their Regional Housing Needs Assessment (RHNA). For projects approved via that streamlined, ministerial pathway, statute mandates that the local government approval remains valid for three years from the date of final judgment upholding the approval. If litigation is filed on a project approved under SB 423 while the developer is requesting a modification request, the original project approval shall remain valid and shall be further extended during litigation. In doing so, SB 423 sets the precedent for state law to supersede permit and planning approval expiration timelines when a project is subject to litigation, as is proposed by this bill.

Litigation during the approvals process: In California, housing approvals are often subject to litigation, a phenomenon that has become a hurdle in addressing the state's housing crisis. Developers seeking to construct new housing projects must navigate a complex regulatory landscape that includes not only obtaining necessary approvals from local governments but also preparing for potential legal challenges. Legal challenges may arise during the various stages of the local approvals process. They may include environmental lawsuits under the California Environmental Quality Act (CEQA); land use and zoning lawsuits, including litigation brought against zoning approvals, variances, conditional use permits, or other local authorizations; lawsuits over fees assessed to a proposed development; lawsuits over building permits issued – or those not obtained – to name a few examples.

These challenges may arise from community groups or individuals who oppose the development for various reasons, such as concerns about environmental impact, traffic congestion, or changes to neighborhood character. Regardless of the intent behind the lawsuit, all lawsuits add time and costs to the development. In some instances, these lawsuits can last for years, if not decades, and they may be used as a tactic to stall, or indefinitely delay, certain developments. Since the state and local governments set timelines under which planning approvals and building permits expire, it is not uncommon for the approval to expire while a project proponent is held up in litigation.

Litigation under CEQA is one of the most notorious legal challenges that a development proponent may face when proposing a new housing development in California. CEQA was enacted in 1970, and it requires state and local agencies to assess and disclose the environmental impacts of development proposals and to mitigate those impacts whenever feasible. CEQA applies to any development project that requires a public agency's discretionary approval. While the Governor's Office of Planning and Research does issue statewide CEQA guidelines for implementation, no state agency oversees the CEQA process, and as such, citizen suits are the primary enforcement mechanism of CEQA compliance.[1] The nature of CEQA, including the lack of state-level governmental oversight and the broad nature of the statute, make CEQA lawsuits one of the more common tools that opponents use to challenge a proposed development. Critics

[1] Moira O'Neill, Giulia Gualco-Nelson, and Eric Biber, *Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates,* 2019

of CEQA claim that CEQA lawsuits are primarily intended to stall proposed developments, rather than addressing legitimate environmental concerns.

CEQA is also inconsistently applied from jurisdiction to jurisdiction, resulting in increased uncertainty and risk associated with projects that are subject to CEQA, depending on where the project is located.[2] While research has shown that administrative appeals are a more common pathway for project opponents to challenge a CEQA decision, litigation under CEQA does still occur.[3] In a 2014-2017 analysis of five jurisdictions in the Bay Area, UC Berkeley researchers found that 6% of all units approved, or nearly 2,000 homes, were subjected to CEQA lawsuits. There was also significant variation by jurisdiction, with 13% of the units approved in San Francisco undergoing CEQA litigation compared to no CEQA litigation in Palo Alto. A more recent study found that in 2020 alone, CEQA lawsuits sought to block approximately 48,000 approved housing units statewide, representing slightly less than half of the state's total housing pipeline.[4]

The added risk and delays associated with any litigation brought against a proposed development has implications for overall project costs and timelines. These delays may result in local planning and building permit approvals expiring while litigation is ongoing, thus necessitating additional project costs and processes, and subjecting the potential for permit extension to the whims of the local building official, or other local processes in place building permit and planning entitlement timeframes.

Clearly the threat of lengthy litigation is a constraint to the state's housing pipeline, and in some instances, results in approved homes never being built. AB 2117 would provide certainty to developers that they will not lose their project approvals simply because their projects are sued by opponents, some of whom may not want to see that housing ever be constructed. While there is currently a system in place for developers to request extensions to approved building permits or planning entitlements, those are typically subjected to the approval of local officials, such as the Chief Building Official or local Zoning Administrator. The requests may also involve a public hearing or other local processes. AB 2117 protects approvals already in place when a project is subjected to litigation.

Arguments in Support: According to the bill sponsor, Chico Builders Association, "this policy change helps represent a crucial step towards protecting applicants, builders, and developers from the detrimental effects of meritless litigation and facilitating the timely commencement and completion of much-needed development projects. According to the California Department of Housing and Community Development during the last ten years, housing production averaged fewer than 80,000 new homes each year, and ongoing production continues to fall far below the projected need of 180,000 additional homes annually. One reason behind this delay as many are aware, is the fact that the development process often faces significant challenges, including legal actions that can lead to delays, uncertainty, and increased costs. In many cases, these legal challenges are unfounded and serve only to hinder progress without any legitimate basis. Assembly Bill 2117 addresses this issue by providing a mechanism to suspend the expiration period for permits or entitlements during litigation, ensuring that applicants are not unfairly penalized for circumstances beyond their control.

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[2] IBID.
[3] IBID.
[4] Jennifer Hernandez, *In the Name of The Environment Part III: CEQA, Housing, and the Rule of Law*, 2023.

Furthermore, AB 2117 promotes efficiency and expediency in the development process by allowing applicants to resume development promptly following the conclusion of litigation. Without the burden of reapplying for permits lost due to litigation delays, applicants can focus their resources on advancing their projects, ultimately benefiting the communities they serve."

Arguments in Opposition: None on file.

Related Legislation:

AB 1152 (Patterson), (2023**)** Similar to AB 2117, AB 1152 would have required the permit expiration timelines and conditional of approval to be stayed during legal challenges. It was referred to both the Committees of Natural Resources and Local Government, but did not receive a hearing.

SB 423 (Wiener), Chapter 778, Statutes of 2023. Provides for a streamlined, ministerial approvals process for housing developments in jurisdictions that are not on track to meet their Regional Housing Needs Assessment (RHNA). For projects approved via that streamlined, ministerial pathway, the local government approval remains valid for three years from the date of final judgment upholding the approval. If litigation is filed on a project approved under SB 423 while the developer is requesting a modification request, the original project approval shall remain valid and shall be further extended during the pendency of the litigation.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Chico Builders Association (Sponsor)
BuildCasa
California Building Industry Association
Chico Chamber of Commerce
North Valley Property Owners Association
Sand Hill Property Company
SPUR
The Two Hundred
Valley Contractors Exchange
Valley Contractors Workforce Foundation
YIMBY Action

Opposition
None on file.

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2243 (Wicks) – As Amended March 19, 2024

SUBJECT: Affordable Housing and High Road Jobs Act of 2022: objective standards and affordability and site criteria

SUMMARY: Makes changes to the Affordable Housing and High Road Jobs Act of 2022 (AB 2011) including expanding where it applies. Specifically, **this bill**:

1) Adds new definitions, and revises existing definitions, as follows:

    a) Adds a definition of "base units" and specifies that affordability requirements for purposes of AB 2011 are calculated based on the number of base units.

    b) Amends the definition of "commercial corridor" so that the provisions of AB 2011 apply to narrower corridors in areas zoned for taller buildings as follows:

        i. For parcels zoned for a height limit of less than 65 feet, a right-of-way of at least 70 and not greater than 150 feet is required; or

        ii. For any parcel zoned for a height limit equal to or greater than 65 feet, a right-of-way of at least 50 and not greater than 150 feet is required.

    c) Adds a definition of "freeway," which has the same meaning as defined in Section 332 of the Vehicle Code, and clarifies that "freeway" does not include onramps and offramps.

    d) Adds a definition of "highway," and specifies that "highways" includes sidewalks.

    e) Expands the definition of "industrial use" to include any use that requires a permit from an air quality district, while also excluding from the definition uses that only have a backup generator and on-site residential self-storage.

    f) Adds a definition of "minimum efficiency reporting value" ("MERV"), which means the measurement scale developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers used to report the effectiveness of air filters.

    g) Amends the definition of "neighborhood plan" to include timing parameters so that the definition does not include plans adopted after January 1, 2024 or longer than 25 years ago. The definition also does not include community plans that cumulatively cover more than one-half of the area of a jurisdiction.

    h) Amends the definition of "principally permitted use" to include projects that were allowed on or after January 1, 2023, when AB 2011 became effective, and to include sites zoned for parking even if parking requires a conditional use permit.

    i) Adds a definition of "regional mall," as a site that has:

i. At least 250,000 square feet of permitted retail use;

ii. At least two thirds of the permitted uses on the site permitted for retail uses; and

iii. At least two of the permitted retail uses on the site that are at least 10,000 square feet.

j) Deletes the definition of "side street" and associated "side street" provisions throughout AB 2011.

k) Amends the definition of "urban uses" to include a city park.

l) Amends the definition of "use by right" to clarify that a project meeting the provisions of AB 2011 is ministerial and streamlined, regardless of whether local processes would otherwise subject any part of the project to discretionary approvals, permits, or review processes, or any review under the California Environmental Quality Act (CEQA).

2) Amends the site locational criterion for both affordable housing and mixed-income projects eligible for this streamlined, ministerial review process as follows:

a) Allows for bicycle and pedestrian paths to be considered "urban uses" that must surround a site for a project there to be eligible for AB 2011;

b) Applies AB 2011 to sites that have a General Plan designation of industrial but where residential uses are principally permitted, or the site is adjoining a parcel with a residential us;

c) Applies AB 2011 to sites that are permitted for industrial uses but have been occupied for the past three years;

d) Prevents projects from utilizing AB 2011 in the coastally sensitive areas outlined in Government Code (GOV) Section 65913.4(a)(6), exclusive of 65913.4(a)(6)(iv) – parcels not zoned for multifamily housing in the coastal zone; and

e) Removes language referencing sites in neighborhood plans adopted between 2022 and 2024.

3) Prohibits the demolition of a historic structure placed on a national, state, or local historic register for affordable housing projects under AB 2011.

4) Establishes the affordability requirements in 2011 for both 100% affordable and mixed-income developments apply only to the new units created by the development project for purposes of calculating affordability requirements when a project utilizing AB 2011 is proposed on a site that contains existing housing units.

5) Amends the objective development standards that apply to all developments using this streamlined, ministerial approval pathway as follows:

a) Specifies that any Environmental Site Assessments and any affiliated environmental remediation required under AB 2011 only needs to occur once the project is approved,

but any required environmental remediation must occur before a certificate of occupancy is issued;

b) Applies AB 2011 to sites located within 500 feet of a freeway, so long as any projects within a 500 foot radius of a freeway provide air filtration with a MERV of 13 in the habitable parts of the building;

c) Applies AB 2011 to sites located within 1,200 feet of oil and gas facilities, so long as any projects within a 1,200 foot radius of those facilities provide air filtration with a MERV of 13 in the habitable parts of the building; and

d) Prohibits the imposition of new common open space requirements for AB 2011 projects that convert existing space from nonresidential buildings to residential uses.

6) Revises the local approval process for all AB 2011 development projects as follows:

a) Clarifies the following timelines in which a local government must determine whether a proposed development meets objective standards:

i. Within 60 days of submittal if the development contains 150 or fewer housing units; or

ii. Within 90 days of submittal if the development contains more than 150 housing units.

b) Establishes a 30 day review timeframe from the time of submittal of any subsequent revisions if a proposed development is deemed inconsistent with objective standards.

c) Requires the local government to provide the development proponent with a written and exhaustive list of all standards that the development conflicts with in the timelines prescribed in (i) and (ii) if it is deemed to be inconsistent with the objective standards, and then approve subsequent revisions within the timeframe in (b).

d) Establishes the following timelines under which the local government must approve the development proposal once it complies with the objective standards. This includes conducting any required design review processes:

i. Within 90 days of submittal if the development contains 150 or fewer housing units; or

ii. Within 180 days of submittal if the development contains more than 150 housing units.

e) Specifies that any local design review conducted on AB 2011 development proposals must be conducted by the local body that undertakes design review for all other development proposals.

f) Requires the Coastal Commission to ministerially approve AB 2011 projects for which they are the entitling body.

g) Requires the granting of any concessions, incentives, or waivers under Density Bonus Law (DBL) for AB 2011 development proposals, including those allowed pursuant to GOV 65915, to be done without the exercise of any local discretion.

   i. Development proposals seeking DBL concessions, incentives, or waivers under DBL shall not be considered "projects" under CEQA, even if that incentive, concession, or waiver is not specified in a local ordinance; and

   ii. The receipt of any density bonus, concession, incentive, waiver or reduction of development standards, and parking ratios to which the applicant is entitled under DBL shall not constitute a basis to find the project inconsistent with the local coastal program.

h) Requires jurisdictions update their zoning maps if they exempt parcels from AB 2011 and reclassify others to reflect those changes, and post that map on their internet websites.

i) Specifies that any Environmental Site Assessments and any affiliated environmental remediation required under AB 2011 only needs to occur once the project is approved, but any required environmental remediation must occur before a certificate of occupancy is issued.

7) Applies the provisions of AB 2011 to the following mixed-income projects:

   a) Mixed-income developments that propose the conversion of existing office buildings to residential uses, even if the office building is not along a commercial corridor.; and

   b) Mixed-income developments on sites that contain existing regional malls, meeting the definition of "regional mall," as long as the regional mall site is not greater than 100 acres.

8) Establishes the following density, affordability and building envelope provisions for mixed-income developments:

   a) Clarifies that the AB 2011 affordability requirements are calculated on the base units, prior to the calculation of any applicable density bonus;

   b) Clarifies that if a jurisdiction has local affordability requirements that set a deeper level of affordability than is otherwise set in AB 2011, the local affordability threshold shall apply to AB 2011 developments; Further clarifies how to conduct affordability calculations if the local affordable housing requirement requires greater than 15 percent of the units to be dedicated for low-income households but does not require the provision of homes affordable to very low and extremely low income households;

   c) Establishes that the allowable densities provided in AB 2011 are calculated on the base units, prior to the calculation of any applicable density bonus;

   d) Establishes that the methodologies established in DBL apply when determining the residential density allowed by the local government for AB 2011;

e) Allows AB 2011 projects to be developed at a residential density that is up to 25% less than the allowable residential density;

f) Removes residential density limits for AB 2011 projects that convert existing buildings into residential uses, unless the development project adds 20% of more, new square footage to an existing building;

g) Requires ground floor front setbacks to be calculated from the public right-of-way, rather than the front property line, for AB 2011 projects;

h) Precludes local objective design standards from preventing AB 2011 developments to be built to the maximum allowable density or unit size established by the bill;

i) Allows development proponents to use density bonus concessions, incentives, and waivers to deviate from AB 2011's height restrictions, as well as AB 2011's side and rear setback requirements.

EXISTING LAW:

1) Establishes AB 2011 (Wicks, Chapter 647, Statutes of 2021), which allows 100% affordable and mixed-income housing projects in zones where office, retail, or parking are principally permitted uses to be a use by right, and subject to a streamlined, ministerial review process, notwithstanding any inconsistent provision of a local government's plans, ordinances, or regulations, if it meets certain provisions.

2) **Definitions:** Defines the following terms: (Government Code (GOV) 65912.101)

a) Defines "commercial corridor" as a highway, as defined in Section 360 of the Vehicle Code, that is not a freeway, as defined in Section 332 of the Vehicle Code, and that has a right-of-way, as defined in Section 525 of the Vehicle Code, of at least 70 and not greater than 150 feet.

b) Defines "industrial use" as utilities, manufacturing, transportation storage and maintenance facilities, and warehousing uses. "Industrial use" does not include power substations or utility conveyances such as power lines, broadband wires, and pipes.

c) Defines "neighborhood plan" as a specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3, or an area plan, precise plan, urban village plan, or master plan that has been adopted by a local government.

d) Defines "principally permitted use" as a use that may occupy more than one-third of the square footage of designated use on the site and does not require a conditional use permit.

e) Defines "use by right" as a development project that satisfies both of the following conditions:

i. The development project does not require a conditional use permit, planned unit development permit, or other discretionary local government review.

ii. The development project is not a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

3) **Location provisions for affordable housing developments in commercial zones:** The site must: (GOV 65912.111)

    a) Be located on a site where at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For purposes of this subdivision, parcels that are only separated by a street or highway shall be considered to be adjoined.

    b) Not be on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use. "Dedicated to industrial use" means any of the following:

        i. The square footage is currently being used as an industrial use;

        ii. The most recently permitted use of the square footage is an industrial use; or,

        iii. The site was designated for industrial use in the latest version of a local government's general plan adopted before January 1, 2022.

    c) Not be located in environmentally sensitive areas of the Coastal Zone.

    d) Satisfy one of two conditions if it is located in a neighborhood plan area:

        i. The neighborhood plan allowing multifamily housing development was in place by January 1, 2022; or,

        ii. The neighborhood plan allowing such development was in place by January 1, 2024, with a notice of preparation issued before January 1, 2022; the plan was adopted between January 1, 2022, and January 1, 2024; and the environmental review completed before January 1, 2024.

4) Specifies that an affordable housing development project shall not be subject to a streamlined, ministerial review process unless the development proposal meets certain objective development standards. (GOV 65912.112)

5) Requires the affordable housing development proponent to complete a phase I environmental assessment, and associated mitigation, but does not specify when that assessment must occur. (GOV 65912.113)

6) Prohibits affordable housing development projects pursuant to AB 2011 on sites located within 500 feet of a freeway from utilizing this streamlined, ministerial review process. (GOV 65912.113)

7) Prohibits affordable housing development projects pursuant to AB 2011 on sites located within 3,200 feet of an oil or gas refinery from utilizing this streamlined, ministerial review process. (GOV 65912.113)

8) **Review requirements for affordable housing developments in commercial zones:** (GOV 65912.114)

    a) Requires local governments to approve developments that comply with the objective planning standards specified in the article.

b) If a development conflicts with any of these standards, requires the local government is to provide written documentation of the conflicting standards and an explanation for the conflict within 60 days for developments with 150 or fewer housing units, and within 90 days for developments with more than 150 housing units.

c) Permits local governments to conduct design review of developments through planning commissions or equivalent boards, city councils, or boards of supervisors, focusing on compliance with criteria for streamlined, ministerial review and any reasonable objective design standards established before the development's submittal.

   i. Requires the design review to be objective, broadly applicable, and reasonable.

   ii. Requires the design review to be completed within 90 days for developments with 150 or fewer housing units and within 180 days for developments with more than 150 housing units.

d) Permits developments pursuant to this section to utilize the provisions of Density Bonus Law.

e) Authorizes local governments to exempt parcels from the provisions of AB 2011 and identify new parcels to replace those exempted parcels if:

   i. The parcels meet specific criteria set out in the law;

   ii. The parcels are either reclassified for development according to the chapter's requirements or authorized for ministerial development at higher densities;

   iii. The substitution of these parcels ensures no net loss of residential capacity or affordable housing capacity and furthers fair housing;

   iv. Reclassified parcels are eligible for development regardless of conflicting local regulations, and their development must be ministerial at specified densities and heights;

   v. The local government has completed all required rezonings for the sixth revision of its housing element.

9) **Objective planning standards for mixed-income housing developments along commercial corridors:** requires a local government to approve the development proposal if certain objective planning standards are met, including: (GOV 65912.121)

a) The project site abuts a commercial corridor and has a frontage along the commercial corridor of a minimum of 50 feet.

b) The site is not greater than 20 acres.

c) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For purposes of this subdivision, parcels that are only separated by a street or highway shall be considered to be adjoined.

d) The site cannot contain, or be adjoined to, a site where more than one third of the square footage is dedicated to industrial use. Dedicated to industrial use means:

   i. The square footage is currently industrial use;

   ii. The most recently permitted use of the square footage is industrial use; or,

   iii. The site was designated for industrial use in the latest version of a local government's general plan adopted before January 1, 2022.

e) The site must satisfy one of two conditions if it is located in a neighborhood plan area:

   i. The neighborhood plan allowing multifamily housing development was in place by January 1, 2022; or,

   ii. The neighborhood plan allowing such development was in place by January 1, 2024, with a notice of preparation issued before January 1, 2022; the plan was adopted between January 1, 2022, and January 1, 2024; and the environmental review completed before January 1, 2024.

10) **Affordability criteria for mixed-income housing developments along commercial corridors:** (GOV 65912.122)

a) Requires rental housing to include either:

   i. Eight percent of the units for very low income households and 5 percent of the units for extremely low income households; or,

   ii. Fifteen percent of the units for lower income households.

b) Requires owner-occupied housing to offer:

   i. Thirty percent of the units at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, to moderate-income households; or,

   ii. Fifteen percent of the units at an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, to lower income households.

c) If the local government has a local affordable housing requirement, the housing development project shall comply with all of the following:

   i. The development project shall include the percentage of affordable units required by this section or the local requirement, whichever is higher;

   ii. The development project shall meet the lowest income targeting in either policy; and,

   iii. If the local affordable housing requirement requires greater than 15 percent of the units to be dedicated for lower income households and does not require the inclusion of units affordable to very low and extremely low income households, then the rental housing development shall do both of the following:

a. Include 8 percent of the units for very low income households and 5 percent of the units for extremely low income households; and,

b. Fifteen percent of units affordable to lower income households shall be subtracted from the percentage of units required by the local policy at the highest required affordability level.

11) **Objective development standards for mixed-income housing along commercial corridors:** (GOV 65912.123)

a) At least 67 percent of the square footage of the new construction associated with the project is designated for residential use;

b) The residential density for the development is determined as follows:

i. In a metropolitan jurisdiction, as specified, the residential density for the development must meet or exceed the greater of the following:

1. The residential density allowed on the parcel by the local government;

2. For sites of less than one acre in size, 30 units per acre;

3. For sites of one acre in size or greater located on a commercial corridor of less than 100 feet in width, 40 units per acre;

4. For sites of one acre in size or greater located on a commercial corridor of 100 feet in width or greater, 60 units per acre; and

5. Notwithstanding (2), (3), or (4), for sites within one-half mile of a major transit stop, 80 units per acre.

ii. In a jurisdiction that is not a metropolitan jurisdiction, as specified, the residential density for the development must meet or exceed the greater of the following:

1. The residential density allowed on the parcel by the local government;

2. For sites of less than one acre in size, 20 units per acre;

3. For sites of one acre in size or greater located on a commercial corridor of less than 100 feet in width, 30 units per acre;

4. For sites of one acre in size or greater located on a commercial corridor of 100 feet in width or greater, 50 units per acre; and

5. (E) Notwithstanding subparagraph (B), (C), or (D), for sites within one-half mile of a major transit stop, 70 units per acre.

c) The property meets the following setback standards:

i. For the portion of the property that fronts a commercial corridor, the following must occur:

1. No setbacks can be required;

2. All parking must be set back at least 25 feet; and

3. On the ground floor, the development must abut within 10 feet of the property line for at least 80 percent of the frontage.

ii. For the portion of the property that fronts a side street, a building or buildings must abut within 10 feet of the property line for at least 60 percent of the frontage;

iii. For the portion of the property line that does not abut a commercial corridor, a side street, or an adjoining property that also abuts the same commercial corridor as the property, certain standards are required.

d) No parking can be required, except that this bill does not reduce, eliminate, or preclude the enforcement of any requirement to provide bicycle parking, electric vehicle supply equipment installed parking spaces, or parking spaces that are accessible to persons with disabilities that would have otherwise applied to the development;

e) Phase I environmental assessments, and associated mitigation, are required;

f) Proposed developments cannot be located within 500 feet of a freeway, or 3,200 feet of an oil or gas extraction or refinery facility.

12) **Approval processes for developments along commercial corridors:** (GOV 65912.124)

a) Requires local governments to approve developments that comply with the objective planning standards specified in the article.

b) If a development conflicts with any of these standards, requires the local government is to provide written documentation of the conflicting standards and an explanation for the conflict within 60 days for developments with 150 or fewer housing units, and within 90 days for developments with more than 150 housing units.

c) Permits local governments to conduct design review of developments through planning commissions or equivalent boards, city councils, or boards of supervisors, focusing on compliance with criteria for streamlined, ministerial review and any reasonable objective design standards established before the development's submittal.

i. Requires the design review to be objective, broadly applicable, and reasonable.

ii. Requires the design review to be completed within 90 days for developments with 150 or fewer housing units and within 180 days for developments with more than 150 housing units.

d) Permits developments pursuant to this section to utilize the provisions of Density Bonus Law.

e) Authorizes local governments to exempt parcels from the provisions of AB 2011 and identify new parcels to replace those exempted parcels if it makes certain written findings.

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author: "AB 2243 amends the language of the Affordable Housing and High Road Jobs Act of 2022 (AB 2011, Wicks). These amendments facilitate implementation of AB 2011 by expanding its geographic applicability and clarifying aspects of the law that are subject to interpretation. Collectively, the changes in AB 2243 would improve AB 2011 and, in doing so, make it easier to build more housing in the right locations."

Statewide Housing Needs: According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update,[1] California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.[2]

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle. By contrast, housing production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.[3] As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- 2.1 percent of the very low-income RHNA
- 4.8 percent of the low-income RHNA
- 4.8 percent of the moderate-income RHNA
- 12.7 percent of the above moderate-income RHNA

Recent State Efforts to Address the Housing Crisis: In recent years, the state has taken a series of steps to address land use and regulatory constraints to new housing production. These include polices such as allowing accessory dwelling units by right,[4] reforming single family zoning,[5] and reforming the process local governments use to determine how much, where, and how to plan for housing. [6] The state has also enacted measures to expedite the approval of affordable housing.

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[1] California Department of Housing and Community Development, *A Home for Every Californian*: 2022 Statewide Housing Plan. March 2022, https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136
[2] U.S. Department of Housing and Urban Development, Point in Time Counts. https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml
[4] AB 2299 (Bloom), Chapter 735, Statutes of 2016 and SB 1069 (Wieckowski), Chapter 720, Statutes of 2016.
[5] SB 9 (Atkins), Chapter 162, Statutes of 2021.
[6] This includes many bills, including AB 72 (Santiago), Chapter 370, Statutes of 2017, AB 1397 (Low), Chapter 375, Statutes of 2017, SB 166 (Skinner), Chapter 367, Statutes of 2017, AB 686 (Santiago) Chapter 958, Statutes of 2018, AB 1771 (Bloom) Chapter 989, Statutes of 2018, and SB 828 (Wiener), Chapter 974, Statutes of 2018.

This includes measures to make supportive housing a by right use,[7] and make affordable and market-rate housing by right in jurisdictions where housing production is below identified targets.[8] This also includes measures to regulate and normalize the housing approval process,[9] and limit the ability of local governments to deny, delay, or diminish projects that otherwise meet all of local objective standards.[10]

These recent efforts included the passage of AB 2011 (Wicks), Chapter 647, Statutes of 2022, also known as the Affordable Housing and High Road Jobs Act of 2022. AB 2011 went into effect on July 1, 2023. AB 2011 allows housing development in areas that are zoned for parking, retail, or office buildings, and provides eligible developments with a streamlined, ministerial approvals process. That means eligible developments in commercial zones and along commercial corridors are exempt from most local approval processes and review under the California Environmental Quality Act (CEQA) – provided that the project meets affordability, labor, and other standards specified in the bill. Projects that qualify for by-right approval can be 100% affordable housing or mixed-income housing. Mixed-income housing developments are limited to commercial corridors that are wide enough to accommodate increased density and transit, while 100% affordable housing projects utilizing AB 2011 can be developed in a wider range of commercial zones. All development must occur within infill areas, which is aligned with the state policy goals of reducing sprawl, limiting greenhouse gas emissions, and ensuring that residents are connected to existing transit and infrastructure.

To qualify as an affordable housing project under AB 2011, a development must make all units affordable for low-income households to rent or own. Mixed-income rental housing developments must make 8% of units affordable to very low-income households and 5% of units affordable to extremely low-income households, or 15% of units affordable to low-income households. Mixed-income owner-occupied developments must either make 30% of units affordable to moderate-income households or 15% affordable to low-income households. For both affordable and mixed-income projects, rental homes must be deed-restricted to maintain affordability for 55 years and owner-occupied homes must be deed-restricted to maintain affordability for 45 years.

Housing developments must meet or exceed geographically appropriate residential density and height standards, which vary based on location and affordability restrictions. AB 2011 does not apply to sites that contain tribal cultural resources, are located within 500 feet of a freeway or 3,200 feet of an oil or gas refinery, or are located within state-designated high fire hazard zones. Construction under AB 2011 cannot result in demolition of existing housing or historic structures.

Since the drafting of AB 2011, there have been substantial changes to the economy, including the collapse of demand for office space, the reduced demand for brick-and-mortar retail, and an increase in interest rates. These changes have created both the demand and opportunity to open up additional potential sites where housing might be economically feasible. Additionally, since AB 2011's enactment, housing developers and local governments have identified aspects of the law's language that are subjective and open to interpretation. This subjectivity has led to project

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[7] AB 2162 (Chiu), Chapter 753, Statutes of 2018.
[8] SB 35 (Wiener), Chapter 366, Statutes of 2017, SB 423, Chapter 7778, Statutes of 2023.
[9] SB 330 (Skinner), Chapter 654, Statutes of 2019.
[10] AB 1515 (Daly), Chapter 378, Statutes of 2017, and SB 167 (Skinner), Chapter 368, Statutes of 2017.

delays and dissuaded use of the law. It has also led to inconsistent application across jurisdictions and created the potential for litigation for projects utilizing the provisions of the Affordable Housing and High Road Jobs Act of 2022.

This bill, AB 2243, would expand AB 2011's geographic applicability and clarify aspects of the law that are currently subject to local interpretation. In terms of geographic expansion, AB 2243 would expand AB 2011 to include the following:

- The conversion of office to housing, even if the site is not along a major commercial corridor;
- To regional malls that exceed 20 acres in size, but are not larger than 100 acres in size;
- To existing high-rise districts even if site is not along a commercial corridor; and
- To sites within 500 feet of freeways and 3,200 feet of oil and gas extraction facilities, as long as those projects utilize specified air filtration with a minimum efficiency reporting value of 13.

In terms of removing subjectivity, AB 2243 includes the following, in addition to other proposed changes:

- Clarifies the intersection of Density Bonus Law and AB 2011, specifically that the affordability requirements of the Affordable Housing and High Road Jobs Act of 2022 apply to a projects proposed base units, not any bonus or existing units;
- Clarifies that all aspects of AB 2011 projects are ministerial and not subject to CEQA; and,
- Specifies that any site remediation needs to occur after project approval but before the site can be occupied.

There is a demonstrable need to facilitate residential development in downtown areas to address current market conditions and the need to redevelop and promote economic revitalization. The provisions of the bill that would reduce discretion and subjectivity in the local approvals process would help to streamline the approvals process, making it more predictable and efficient, and ultimately allowing housing units to be constructed more quickly.

Arguments in Support: According to the Housing Action Coalition, one of the bill sponsors, "since the enactment of AB 2011, there have been substantial changes to the economy, including the collapse of demand for office space, the reduced demand for brick-and-mortar retail, and an increase in interest rates. These changes have created both the demand and opportunity to open up additional potential sites where housing might be economically feasible.

Additionally, since AB 2011's enactment, housing developers and local governments have identified aspects of the law's language that are subjective and open to interpretation. This subjectivity has led to project delays and dissuaded utilization of the law. It has also led to inconsistent application across jurisdictions and created the potential for unnecessary lawsuits.

AB 2243 would address these issues by expanding AB 2011's geographic applicability and clarifying aspects of the law that are subject to interpretation. In particular, it would allow more redevelopment of malls, conversion of offices to housing, and development in existing high-rise districts even if the site is not on a commercial corridor. It would also clarify the intersection of AB 2011 and density bonus law, specify that all aspects of AB 2011 projects are ministerial and

not subject to CEQA, and specify that any site remediation needs to occur after project approval but before the site can be occupied.

AB 2243 will make it easier to build much more housing in the right locations."

Arguments in Opposition: According to the League of California Cities, "Cal Cities strongly believes that cities need the time and space to implement the dozens of new housing laws passed in recent years. Additionally, many cities are still actively working to update their required housing element. Before making yet more changes to the law, lawmakers and the Governor should partner with cities to ensure that they have the necessary tools and technical assistance to develop housing plans that work in each unique community."

Committee Amendments: The Committee recommends the following amendment to allow for housing developments to utilize the provisions of AB 2243 so long as an industrial site has been vacant for at least three years. For the purpose of timing, the amendments will be taken in the Assembly Local Government Committee, should this bill pass out of this Committee.

65912.111. & 65912.121:

A development project shall not be subject to the streamlined, ministerial review process provided by Section 65912.114/.124 unless the development is proposed to be located on a site that satisfies all of the following criteria:

(d) (1) It is not on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use.

(2) For purposes of this subdivision, parcels only separated by a street or highway shall be considered to be adjoined.

(3) For purposes of this subdivision, "dedicated to industrial use" means any of the following:

(A) The square footage is currently being used as an industrial use.

(B) The most recently permitted use of the square footage is an industrial use, and the site has ~~***not***~~ been occupied within the past three years.

Related Legislation:

AB 3068 (Haney): This bill would deem an adaptive reuse project creating residential uses out of existing buildings a use by right in all zones, and subject adaptive reuse projects to a streamlined, ministerial local review and approvals process.

AB 2011 (Wicks), Chapter 647, Statutes of 2021: Created the Affordable Housing and High Road Jobs Act of 2022, creating a streamlined, ministerial local review and approvals process for certain affordable and mixed-use housing developments in commercial zoning districts and commercial corridors.

SB 423 (Wiener), Chapter 778, Statutes of 2023: Amended SB 35 (Wiener), which created a streamlined, ministerial local approvals process for housing development proposals in jurisdictions that have failed to produce sufficient housing to meet their RHNA.

SB 6 (Caballero), Chapter 659, Statutes of 2022. Established the Middle Class Housing Act of 2022, allowing residential uses on commercially zoned property without requiring a rezoning.

AB 2162 (Chiu), Chapter 753, Statutes of 2018: This bill streamlines 100% affordable housing developments that include a percentage of supportive housing units and onsite services.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Conference of Carpenters (Sponsor)
Housing Action Coalition (Co-Sponsor)
Abundant Housing LA
California Apartment Association
California Business Properties Association
California Community Builders
California Housing Consortium
California State Council of Service Employees International Union (SEIU California)
California YIMBY
Central City Association
Circulate San Diego
CivicWell
DignityMoves
East Bay YIMBY
Fieldstead and Company, INC.
Gender Equity Policy Institute
Grow the Richmond
Habitat for Humanity California
Habitat for Humanity Greater San Francisco
Housing Trust Silicon Valley
How to ADU
LeadingAge California
Livable Communities Initiative
MidPen Housing Corporation
Mountain View YIMBY
Napa-Solano for Everyone
Nor Cal Carpenters Union
Northern Neighbors
Peninsula for Everyone
People for Housing – Orange County
Progress Noe Valley
San Francisco YIMBY
San Luis Obispo YIMBY
Sand Hill Property Company
Santa Cruz YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
SPUR

Streets for People
Urban Environmentalists
Ventura County YIMBY
Western States Regional Council of Carpenters
YIMBY Action

Opposition

League of California Cities

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2314 (Lee) – As Amended April 4, 2024

SUBJECT: Tribal housing developments: use by right: density

SUMMARY: Provides unlimited density and a streamlined, ministerial approvals process for tribal housing development projects. Specifically, **this bill**:

1) Deems tribal housing developments an allowable use regardless of zoning designation and does not require a conditional use permit or planned unit development permit, if it meets both of the following requirements:

   a) The housing development is located on a legal parcel on an infill lot; and,

   b) The housing development is not located in the coastal zone.

2) Prohibits local governments from imposing any maximum density requirements on tribal housing developments meeting the requirements of (1).

3) Allows all tribal housing developments to use the streamlined, ministerial approval process established in SB 423 (Weiner), Chapter 778, Statutes of 2023 so long as the projects comply with (1), and any requirements of SB 423 that do not conflict with the provisions of this bill.

4) Applies the provisions of this bill to all cities, including a charter city, counties, including a charter county, and a city or county, including a charter city or county.

EXISTING LAW:

1) Establishes a process for the streamlined, ministerial approval of mixed-income multifamily housing projects in jurisdictions that are not meeting their Regional Housing Needs Allocation (RHNA). (Government Code (GOV) Section 65913.4)

2) Establishes Density Bonus Law, which incentivizes affordable and mixed-income housing construction by providing incentives, concessions, and waivers from local requirements in exchange for additional affordable housing units. (GOV 65915-65918)

3) Clarifies that Tribes are eligible to apply for affordable housing funding programs administered by the California Department of Housing & Community Development (HCD) and creates the California Indian Assistance Program. (Health & Safety Code 50077, 50079, 50091, 50406, 50517.5, 50530.5, 50669, 50843, 53545.12, 53545.13)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Tribal housing insecurity has grown to crisis levels. 40% of Tribe members are considered rent burdened and 1 in 3 live in poverty. With 109

federally recognized and 65 non-federally recognized Tribes, California is the home of more Native American residents than any other state. This bill redresses past wrongs and gives Tribal governments flexibility to build housing at the densities necessary to address their housing needs."

Tribal housing needs: California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state do not earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.[1]

The housing affordability crisis is particularly acute for Tribes. There are 109 federally recognized Tribes and 65 unrecognized Tribes within the state's boundaries, making California the home to more Native American residents than any other state. By most quality-of-life indicators, Tribal California lags well behind the rest of California.[2] One third of Tribal residents live below the federal poverty rate, resulting in a poverty rate that is more than twice of that of the rest of the state.[3] Nearly two of every five Tribal households were rent burdened, meaning they pay more than 30% of their income towards housing.[4]

There is a largely unmet need for new homes, as well as for the rehabilitation of the existing housing and infrastructure, throughout Indian Country.[5] Research by the California Coalition for Rural Housing (CCRH) and the Rural Community Assistance Corporation found that "many tribes have long waiting lists for new homes. Many families will never get access to a new home, given the current low level of funding for affordable housing on tribal land. As a result, thousands of tribal households are fated to live in overcrowded, substandard housing."

Barriers to Tribal housing development: There are well-documented barriers to overall housing production in California including mounting construction costs, a shortage of labor, barriers in obtaining local approvals, opposition to neighborhood change, and a lack of available funding.[6] On top of that, Tribes face unique barriers when it comes to building housing. In a 2015 Indian Housing Survey of Tribal housing administrators and leaders conducted by CCRH, the following top obstacles to Tribal housing production were identified:

1) Lack of funding;

2) Lack of developable land, which may be a function of factors including:

    a. Topography of the land;

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[1] U.S. Department of Housing and Urban Development, Point in Time Counts. https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[2] California Coalition for Rural Housing (CCRH) & Rural Community Assistance Corporation, *California Tribal Housing Needs and Opportunities: A Vision Forward*. August 2019.
[3] IBID.
[4] IBID.
[5] IBID.
[6] California Department of Housing & Community Development, *A Home for Every Californian: 2022 Statewide Housing Plan Update.* March 2022. https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136

b. Location of the land; and

c. Inadequate infrastructure, including inadequate sewer and water systems; and

3) Lack of staff capacity.

There is robust literature pointing to the need for additional funding for, infrastructure to support, and technical assistance to navigate, Tribal housing development. There is also a great need to rehabilitate existing Tribal housing units. A survey by the Rural Community Assistance Corporation found that almost 17% of the 1,285 homes on reservations and Rancherias surveyed were considered substandard, meaning they had some external conditions that represented urgent health and safety problems needing immediate attention.[7] Six of the 19 reservations and Rancherias surveyed had substandard housing that exceeded 23% of the total housing stock.[8] Tribal housing administrators and leaders reported that over one-third of the Tribal population lived in overcrowded conditions.[9] Clearly, there is a great need for additional Tribal housing production and rehabilitation, including the funding, infrastructural investments, and technical assistance to help Tribes access the funds available and complete housing projects.

While tools like additional density and streamlined, ministerial approvals are ways to help promote the financial feasibility of housing developments and ensure that housing meeting certain requirements is expeditiously approved, the research and existing evidence do not point to a demand for high density Tribal housing developments in infill locations, as proposed by AB 2314. A study by CCRH found that existing state housing programs incentivizing high-density, infill development are "ill-designed for the tribal environment."[10] The report specifically pointed to the Infill Infrastructure Grant Program (IIG), which is administered by the California Department of Housing & Community Development (HCD) to support higher density affordable and mixed-income housing in infill locations. CCRH found two defects with IIG when it comes to Tribes and tribal entities using the program, which have implications for AB 2314:[11]

1) The definition of "infill," which would preclude the majority of land owned by Tribes; and,

2) The required minimum density requirements, ranging from 10 to 30 units per acre depending on the county, which "are much higher than the typical development pattern found on reservations and Rancherias."[12]

Similarly, the report found that the Affordable Housing and Sustainable Communities (AHSC) Grant funding program was a poor fit for Tribal applicants, in part due to the "minimum density requirements of 15 units per acre, which far exceeds the typical densities found on tribal land."[13]

AB 2314 would apply to housing developments located on a site owned in fee simple by a Tribe that is not located within the exterior boundaries of Indian Country, so Tribes could theoretically

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[7] CCRH Tribal Housing Study.
[8] IBID.
[9] IBID.
[10] IBID.
[11] IBID.
[12] CCRH Tribal Housing Study, Page 63.
[13] IBID.

use the provisions of this bill to purchase new land in infill locations and build high density housing there, regardless of the underlying local zoning designation. However, as previously noted, there is not a demonstrable need for this dense, infill housing typology for Tribal housing developments at this time, and there are more prominent barriers to housing development currently faced by Tribes and their members throughout the state.

Current state efforts: For decades, Tribal communities were excluded from accessing state-administered housing funding programs, contributing to the lack of safe and affordable tribal housing. In 2011, Governor Brown issued Executive Order (EO) B-10-11 in 2011, which created the Governor's Office of the Tribal Advisor and mandated that all state agencies and departments promote "early consideration, communication, and consultation with Tribes when developing legislation, guidelines, regulations, rules, or policies on matters that affect Tribes and their communities."[14]

In 2019, Governor Newsom issued EO N-15-19, which acknowledged and apologized on behalf of the State for historical "violence, exploitation, and dispossession and the attempted destruction of tribal communities." It also reaffirmed the state's commitments to Governor Brown's EO B-10-11, and reaffirmed the principles of government-to-government relations between the State of California and Tribes.

To address the housing needs of Native American Tribes, the California Legislature passed AB 1010, Chapter 660, Statutes of 2019. This legislation requires the Department of Housing and Community Development (HCD) to meaningfully address tribal access and participation in HCD funding programs.

AB 1010 broadened the list of eligible applicants for HCD funding programs to include Tribal entities, thereby clarifying tribal access HCD-administered funding programs. It also grants the HCD Director the authority to address access barriers faced by tribal applicants to HCD funding programs by allowing the Director to waive or modify certain funding program requirements, at the request of the Tribal applicants. AB 1010 also established the G. David Singleton California Indian Assistance Program (CIAP) to provide comprehensive technical assistance to Tribes and Tribally Designated Housing Entities throughout the application process.

In terms of direct financial assistance to Tribes, HCD administers certain programs with funding specifically for Tribes, like the Tribal Homekey Program and Tribal Homeless Housing Assistance and Prevention (Tribal HHAP) Grants Program. There are also programs that contain a Set Aside Allocation for Tribal applicants, like the Regional Early Action Planning Grants of 2021.

Arguments in Support: According to the California Tribal Business Alliance, *"*AB 2314 builds upon the enactment of AB 1010 (Garcia, Chapter 660, Statutes of 2019), a landmark bill that allowed for the first time, California's tribal governments to participate in the state of California's housing programs. AB 1010 also authorized the Department of Housing and Community Development to modify or waive certain program requirements, such as expanding the definition of "infill" for the purpose of planning grants. As promising as AB 1010 is, the state's tribal housing programs are underperforming in terms of impacting tribal housing needs

[14] California Department of Housing & Community Development. https://www.hcd.ca.gov/policy-and-research/native-american-tribal-affairs

because of programmatic barriers curtailing tribal participation in the programs. AB 2314 seeks to address the longstanding housing needs and disinvestment in tribal communities by removing barriers to housing growth. AB 2314 creates another option for tribal governments to utilize to build housing to meet their citizens' needs."

Arguments in Opposition: None on file.

Related Legislation:

AB 1878 (E. Garcia): Would create the Tribal Housing Advisory Committee (committee) within the Business, Consumer Services, and Housing Agency (BCSH), upon appropriation, and makes changes to tribal liaison and technical assistance requirements that apply to the Department of Housing and Community Development (HCD). This bill is pending hearing in the Appropriations Committee.

SB 423 (Wiener), Chapter 778, Statutes of 2023*:* Expands upon the a streamlined, ministerial approvals process for infill multifamily housing development established in SB 35, Chapter 366, Statutes of 2017.

AB 1010 (E. Garcia), Chapter 660, Statutes of 2019: Made tribes eligible for various affordable housing grant programs and recreated the CIAP at HCD.

Committee Amendments: There is undoubtedly the need to do more when it comes to addressing barriers to Tribal housing development. However, there is insufficient evidence demonstrating that a land use bill centered on high-density housing in infill areas would alleviate the current barriers faced by Tribes when it comes to meeting their housing needs. As such, the committee proposes that AB 2314 is amended to create a Tribal Housing Advisory Committee, as is proposed in AB 1878 (Garcia), and to task that group with identifying the land use barriers currently faced by Tribes, in order to inform future legislation. For the purpose of timing, the amendments will be taken in Assembly Local Government Committee should it pass out of the Assembly Housing & Community Development Committee.

SECTION 1.
Part 14 (commencing with Section 15990) is added to Division 3 of Title 2 of the Government Code, to read:

PART 14. Tribal Housing Advisory Committee
15990.
(a) There is hereby created in the Business, Consumer Services, and Housing Agency the Tribal Housing Advisory Committee, upon appropriation by the Legislature.
(b) (1) The membership of the committee shall be composed of members who are tribal representatives and have knowledge, experience, and expertise in the area of tribal housing, tribal land, tribal government, tribal policy, and tribal law to close the gap of inconsistencies and barriers for tribes to successfully access state-funded grant programs. These members shall consist of at least the following:
(A) Three members from central California.
(B) Three members from northern California.
(C) Three members from southern California.
(2) The committee shall be cochaired by both of the following:
(A) The Secretary of Business, Consumer Services, and Housing or a designee.
(B) A tribal representative voted upon by the committee members.

(c) (1) The Business, Consumer Services, and Housing Agency shall appoint members to the committee. Membership on the committee shall be served on a volunteer basis for four-year terms with no term limits so long as the member is active and does not miss three consecutive meetings.
(2) The Business, Consumer Services, and Housing Agency shall take into account both of the following when appointing members to be on the committee:
(A) Geographic diversity.
(B) Proven qualifying experience and expertise in tribal housing.
(3) An individual may apply to be a member on the committee by submitting an application with all of the following information to the Business, Consumer Services, and Housing Agency:
(A) A letter of nomination and support from their respective tribal chairperson.
(B) A portfolio of qualifying experience, including, but not limited to, demonstrated expertise and experience in tribal housing.
(C) A defined region of representation.
15990.1.
The committee shall do all of the following:
(a) Identify and report to the Business, Consumer Services, and Housing Agency all of the following:.
(1) Land use and regulatory barriers that tribes face when developing housing, including barriers complying with local planning and zoning regulations, and difficulties obtaining the necessary local approvals to build housing.
(2) Recommendations for ways to reduce land use and regulatory barriers that tribes face when developing housing, including recommendations for incentives, concessions, and streamlining that would facilitate tribal housing construction.
(3) A proposal for a tribal technical assistance program, which would include assisting tribes with obtaining the necessary local approvals required to build housing, and assisting tribes with accessing financing to develop housing.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Cachil Dehe Band of Wintun Indians of Colusa
California Tribal Business Alliance
Pala Band of Mission Indians
Pala Housing Resource Center

Opposition

None on file.

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2430 (Alvarez) – As Introduced February 13, 2024

SUBJECT: Planning and zoning: density bonuses: monitoring fees

SUMMARY: Prohibits a city, county, or city and county from charging local monitoring fees on 100% affordable housing developments using Density Bonus Law (DBL*)* to ensure the continued affordability required under DBL and any applicable local inclusionary housing ordinance. Specifically, **this bill**:

1) Defines "monitoring fee" as a recurring fee charged by a city, county, or city and county to oversee and ensure the continued affordability of deed-restricted affordable units in certain 100% affordable housing developments using DBL, as described in (2), and in any applicable local inclusionary housing ordinances.

2) Exempts 100% affordable housing developments utilizing DBL from local monitoring fees, beginning on January 1, 2025, when the following conditions are met:

    a) 100% of the all units in the developments, including total units and bonus units but excluding any managers units, are for lower-income households, except that up to 20% of the units may be for moderate-income households;

    b) The housing development is subject to a regulatory agreement with the California Tax Credit Allocation Committee (CTCAC) or the Department of Housing and Community Development (HCD);

    c) The applicant provides the local government with a copy of a recorded regulatory agreement with the CTCAC, California Debt Limit Allocation Committee (CDLAC), or HCD; and,

    d) The applicant agrees to provide the local government with the compliance monitoring document required by CTCAC, CDLAC, or HCD regulations.

3) Does not preclude a city, county, or city and county from eliminating local density bonus agreement requirements for any development projects in any location.

EXISTING LAW:

1) Establishes Density Bonus law, which provides a pathway for an applicant to seek a density bonus for housing in all cities, counties, or cities and counties in the state. (Government Code (GOV) 65915)

2) Requires cities and counties to grant a density bonus, based on a specified formula, when an applicant for a housing development of at least five units seeks and agrees to construct a project that will contain at least one of the following:

    a) Ten percent of the total units of a housing development for lower-income households;

b) Five percent of the total units of a housing development for very low-income households;

c) A senior citizen housing development or age-restricted mobilehome park;

d) Ten percent of the units in a common interest development (CID) for moderate-income households, provided the units are available for public purchase;

e) Ten percent of the total units for transitional foster youth, disabled veterans, or homeless persons;

f) Twenty percent of the total units for lower-income students in a student housing development, as specified; or,

g) One hundred percent of all units in the development are for lower-income households, except that up to 20 percent of the units may be for moderate-income households. (GOV 65915)

3) Mandates that agencies adopting a new service fee, or increasing an existing fee, charged to a development project must do so through an ordinance or resolution, and must be adopted through a public hearing. (GOV 66017)

4) Stipulates that any service fee charged may not exceed the estimated reasonable cost of providing the service for which the fee is charged. (GOV 66014)

5) Establishes the California Tax Credit Allocation Committee (CTCAC) (GOV 50199.17), California Debt Limit Allocation Committee (CDLAC) (GOV 8869.94), and various affordable housing funding programs through the California Department of Housing and Community Development (HCD).

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "All affordable housing projects that utilize State Density Law and receive state funding, are subject to compliance monitoring to ensure that the units are occupied by a tenant at an eligible income level and that developments meet habitability standards. This state level compliance monitoring is a thorough process that includes desk audits and physical inspections conducted by HCD and TCAC.

Although most cities rely on state monitoring activities to ensure compliance, some cities and counties charge developers a fee to also provide compliance monitoring. While local monitoring fees can vary, most are hundreds of dollars per unit annually, which is in addition to the monitoring fees the state charges.

California is one of the most expensive places to build housing in the state, which makes housing developments incredibly difficult to pencil. This is especially true for affordable housing projects that rely on state and federal funding to make it viable. Any additional cost, especially when it funds duplicative activities, can unnecessarily make or break the viability of a project. By cutting

duplicative costs for developers, AB 2430 will play an important role reducing the price of building affordable housing in California."

Statewide Housing Needs: According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update,[1] California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.[2]

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle. As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- 2.1 percent of the very low-income RHNA
- 4.8 percent of the low-income RHNA
- 4.8 percent of the moderate-income RHNA
- 12.7 percent of the above moderate-income RHNA

Cost of building affordable housing: It is expensive to build housing in California. The UC Berkeley Terner Center finds that challenging macroeconomic conditions, including inflation and high interest rates, affect the availability and cost of capital, resulting in rising costs for labor and materials.[3] Furthermore, workforce and supply shortages have exacerbated the already high price of construction in California, and economic uncertainty has made equity partners and lenders apprehensive about financing new housing development proposals.[4]

An analysis by the California Housing Partnership compares the cost of market rate development prototypes developed by the Terner Center with the median cost of developing affordable rental homes. In the four regions analyzed, the study found that the cost of developing one unit of affordable housing ranged from approximately $480,000 to $713,000, while the cost of developing one unit of market rate housing in the state ranged from approximately $508,000 to $637,000.[5]

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[1] California Department of Housing and Community Development, *A Home for Every Californian*: 2022 Statewide Housing Plan. March 2022, https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136
[2] U.S. Department of Housing and Urban Development, Point in Time Counts. https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] David Garcia, Ian Carlton, Lacy Patterson, and Jacob Strawn, *Making It Pencil: The Math Behind Housing Development (2023 Update)*, Terner Center for Housing Innovation, December 2023, https://ternercenter.berkeley.edu/research-and-policy/making-it-pencil-2023/
[4] IBID.
[5] Mark Stivers, *Affordable Housing Compares Favorably to Market-Rate Housing From a Cost Perspective*, California Housing Partnership, January 2024: https://chpc.net/affordable-housing-compares-favorably-to-market-

Affordable housing monitoring fees: Monitoring fees are one type of fees commonly applied to deed-restricted affordable housing developments in California. Affordable housing monitoring fees are charged by local governments to oversee the compliance of affordable housing developments with regulatory agreements and affordability covenants. These fees are typically collected annually and are used to cover the costs associated with ensuring that affordable housing units remain affordable at the rental rates specified in the deed restriction, and monitoring tenant income eligibility and rent restrictions. The stated goal of these fees is to sustain the long-term affordability and quality of housing while ensuring that developers and property owners adhere to the commitments made under affordable housing agreements.

The amount and type of monitoring fees charged by local governments vary from jurisdiction to jurisdiction. Some jurisdictions charge fees on a per unit basis, some charge a flat fees, and some apply a sliding scale based on the project size. For example, the City of Berkeley charges a monitoring fee of $432 per unit per year, while the City of Dublin charges a sliding scale based on the number affordable units: $1,448 per year for developments of 20 units or less, $2,321 per year for 21-100 units, and $3,343 annually for projects of over 101 units.

These local monitoring fees are often charged on top of state monitoring fees. When state funds are involved in affordable housing development, which is almost always the case in California, the state conducts extensive monitoring of the deed restricted affordable units funded. For projects that receive affordable housing funding in the form of loans, tax credits, or bonds, the following state monitoring fees apply:

- **HCD**: typically charges an annual fee of 0.42 percent of the original principal loan balance for most conventional multifamily loan programs, though the fee may vary based on the specific funding program. This funds routine physical site inspections, which includes, but is not limited to, an examination of tenant files, unit conditions, property standards (common areas, exterior conditions), as well as review of the Management Plan and/or Property Management Agreement.

- **CTCAC**: charges a one-time per unit fee of $410 to cover the costs associated with compliance monitoring throughout the Federal Compliance Period and the Extended-Use period.

This bill seeks to reduce the duplication of monitoring fees charged for 100% affordable housing projects utilizing Density Bonus Law by relying on the thorough state-level monitoring rather than having local governments duplicate these monitoring efforts when state monitoring is required. At the higher end of the spectrum, this could save the typical affordable housing development tens of thousands of dollars in annual fees. However, it is important to ensure that monitoring of all deed-restricted affordable housing units can still be conducted throughout the state and that the provisions of this bill do not prevent local agencies from conducting monitoring that would not otherwise be done by CTCAC, CDLAC, or HCD.

Density Bonus Law: Density Bonus Law (DBL) was originally enacted in 1979 as an incentive to encourage housing developers to produce affordable units at below market rates. In return for including a certain percentage of affordable units, housing developers receive the ability to add

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rate-housing-from-a-cost-perspective/#:~:text=It%20turns%20out%20that%20costs,market%2Drate%20developments%20do%20not.

additional units for their project above the jurisdiction's allowable zoned density for the site (thus the term "density bonus").

The affordability units built using density bonus must be deed restricted for 55 years. Additionally, DBL specifies concessions and incentives around development standards (e.g., architectural, height, setback requirements) and reductions in vehicle parking requirements that projects can receive to offset the cost of building affordable units. Both market rate and 100 percent affordable housing projects can use these provisions and all local governments are required to adopt a density bonus ordinance. However, failure to adopt an ordinance does not exempt a local government from complying with the requirements of DBL. DBL is a critical tool in the state's toolkit when it comes to reducing the price of affordable housing development, and incentivizing the construction of high density housing.

Arguments in Support: According to the California Housing Consortium and Housing California, the bill's co-sponsors, AB 2430 "would help reduce the cost of producing affordable housing.

All affordable housing developments in California that receive state funding are subject to compliance monitoring by the state to ensure that the units are occupied by a tenant at an eligible income level and to ensure that developments meet habitability standards. Compliance monitoring is performed by the California Tax Credit Allocation Committee (TCAC) and the California Department of Housing and Community Development (HCD). For instance, TCAC's compliance monitoring program annually collects information to ensure that the income of families residing in low-income units and the rents they are charged are within regulatory limits.

AB 2430 would prohibit cities and counties from charging affordable housing developers for local compliance monitoring if the development uses Density Bonus law and is subject to a monitoring agreement with TCAC, CDLAC, HCD. This bill would lower costs for affordable housing development without compromising important compliance monitoring that already takes place at the state level."

Arguments in Opposition: According to the San Diego Housing Commission (SDHC), Assembly Bill "would prevent local governments from charging fees for conducting compliance monitoring on deed-restricted affordable housing units constructed under State Density Bonus Law or applicable local inclusionary housing ordinances without absolving jurisdictions from ensuring continued affordability under existing local and federal compliance requirements.

The process the bill proposes to use moving forward, where an affordable housing developer agrees to provide the local jurisdiction the self-certification authorizations and tax documents submitted to the California Debt Limit Allocation Committee (CDLAC) and the California Tax Credit Allocation Committee (TCAC), would impact a jurisdiction's ability to enforce federal and local requirements, which it is contractually obligated to do. It also does not provide the level of accountability that active compliance monitoring provides, which may result in an increase of fraud, non-compliance, and impacts to low-income households."

Committee amendments: Staff recommend the bill be amended as follows to allow local governments to continue to collect monitoring fees if the project is subject to affordability requirements that are not being tracked by CTCAC, CDLAC, or HCD, including local affordability requirements tied to local funding that are different from state requirements,

requirements of a local density bonus programs, or affordability requirements from a funding source other than CTCAC, CDLAC, or HCD funding, among other clarifying amendments:

- Modify Government Code Section 65915(w)(1) to include certain exemptions for when a local government may continue to charge a monitoring fee, found in 65915(x) below;
- Modify Government Code Section 65915(w)(1)(A) to add the California Debt Limit Allocation Committee to the list of state organizations that require a recorded regulatory agreement;
- Strike the provision of Government Code Section 65915(w)(2) which states that this subdivision does not preclude a local government from eliminating a local density bonus agreement requirement for development projects of any types in any location; and,
- Add Government Code Section 65915(x) to specify that local governments can still collect monitoring fees if on 100% affordable DBL projects if the applicant:
    - Utilizes a local density bonus program that requires deeper affordability, including a higher number of affordable units, or uses a local incentive program where a percentage of the units are affordable to and occupied by moderate income households;
    - Accepts a local funding source that requires different affordability, measured through area median income or rents, than what is monitored for by the California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development; or,
    - Accepts funding from a state, regional, or federal agency other than the California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development that requires local monitoring activities that would not otherwise be conducted by the California Tax Allocation Committee, California Debt Limit Allocation Committee, Department of Housing and Community Development, or the public agency issuing the funding.

65915.

(w) (1) A city, county, or city and county shall not charge a monitoring fee on a housing development that meets the criteria of subparagraph (G) of paragraph (1) of subdivision (b) if all of the following conditions are met***, except as otherwise provided in subdivision (x)***:

(A) The housing development is subject to a recorded regulatory agreement with the California Tax Credit Allocation Committee***, the California Debt Limit Allocation Committee,*** or the Department of Housing and Community Development that requires compliance with subparagraph (G) of paragraph (1) of subdivision (b).

(B) Prior to receiving a building permit, the applicant provides to the local government a fully executed Tax Credit Reservation Letter indicating that the applicant accepted the award.

(C) The applicant provides to the local government a copy of a recorded regulatory agreement with the California Tax Allocation Committee, the California Debt Limit Allocation Committee, or the Department of Housing and Community Development.

(D) The applicant agreed to provide to the local government the compliance monitoring document required pursuant to California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development regulations.

~~(2) This subdivision does not preclude a city, county, or city and county from eliminating a local density bonus agreement requirement for development projects of any type in any location.~~

(2)~~(3)~~ Beginning on January 1, 2025, a housing development that is currently placed in service, is subject to a monitoring fee, and meets the requirements of paragraph (1) shall no longer be subject to that fee.

(3)~~(4)~~ For purposes of this subdivision, "monitoring fee" means a fee charged by a city, county, or city and county on a recurring basis to oversee and ensure the continued affordability of a housing development pursuant to this section and any applicable local inclusionary housing ordinance.

(x) A city, county, or city and county may charge a monitoring fee on a housing development that meets the criteria of subparagraph (G) of paragraph (1) of subdivision (b) if any of the following apply:

1. ***The applicant utilizes a local density bonus program that requires deeper affordability, including a higher number of affordable units, or uses a local incentive program where a percentage of the units are affordable to and occupied by moderate income households.***
2. ***The applicant accepts a local funding source that requires different affordability, measured through area median income or rents, than what is monitored for by the California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development.***
3. ***The applicant accepts funding from a regional, state, or federal agency other than the California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development that requires local monitoring activities that would not otherwise be conducted by the California Tax Allocation Committee, California Debt Limit Allocation Committee, Department of Housing and Community Development, or the public agency issuing the funding.***

Related legislation:

AB 578 (Berman), 2023 would have standardized the monitoring fees charged by the California Department of Housing and Community Development (HCD) for the No Place Like Home program to 0.42% per year, or $260 per unit, whichever is less. The bill was held in suspense.

AB 434 (Daly) Chapter 192, Statutes of 2020 standardized the monitoring fee and procedures for certain multifamily housing funding programs administered by HCD to 0.42% per year, and standardized the monitoring requirements for programs impacted by the bill.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Consortium (Sponsor)
Housing California (Sponsor)
Associated General Contractors
Brilliant Corners
California Apartment Association
Community Corporation of Santa Monica
EAH Housing
Homes & Hope
LeadingAge California
MidPen Housing Corporation
Mutual Housing California
Wakeland Housing and Development Corporation

Opposition

City of Inglewood

Oppose Unless Amended

City of Lafayette
San Diego Housing Commission

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2485 (Juan Carrillo) – As Amended March 19, 2024

SUBJECT: Regional housing need: determination

SUMMARY: Requires the Department of Housing and Community Development (HCD) to take certain actions in determining the existing and projected housing need for each region through the regional housing needs determination (RHND) process. Specifically, **this bill**:

1) Requires HCD to publish on its website the data sources, analyses, and methodology to be used by the department to determine the RHND, including specified assumptions and factors used in and applied to the Department of Finance (DOF) projections and engagement process with the council of governments (COG), prior to finalization of the RHND.

2) Requires HCD, for the seventh and subsequent housing element cycles, to assemble and convene an advisory panel to advise HCD on its assumptions and the methodology it shall use for purposes of the RHND. Requires the panel to be composed of all of the following:

    a) A United States Census Bureau-affiliated practitioner;

    b) An expert on specified data; and

    c) A representative from the COG.

3) Requires HCD to consult with the advisory panel before making determinations in writing on specified data assumptions and the methodology it shall use for the RHND, and to provide the written determinations to the COG and publish them on HCD's website.

EXISTING LAW:

1) Provides that each community's fair share of housing be determined through the regional housing needs determination and allocation (RHND/RHNA) process. Sets out the process as follows: (a) DOF and HCD develop regional housing needs estimates; (b) COGs allocate housing within each region based on these determinations, and where a COG does not exist, HCD conducts the allocations; and (c) cities and counties incorporate these allocations into their housing elements. (Government Code (GC) Section 65584 and 65584.01)

2) Requires HCD, in consultation with each COG, to determine the RHND for each region using population projections produced by DOF and regional population forecasts used in preparing regional transportation plans (RTP), in consultation with each COG. If the total regional population forecast for the projection year developed by the COG and used in the RTP is within a range of 1.5% of DOF's projection, then the COG's forecast must be used for the RHND. If the difference between the COG and DOF's projection is greater than 1.5%, then HCD and the COG must meet to discuss variances in methodology used for the projections and seek agreement on a projection for the region to be used for the RHND. If

agreement is not reached, then DOF's projection must be used, and may be modified by HCD as a result of discussions with the COG. (GC 65584.01(a))

3) Requires HCD, at least 26 months prior to the housing element adoption deadline for the region and prior to developing the existing and projected housing need for a region, to meet and consult with the COG regarding the assumptions and methodology to be used by HCD to determine the RHND. Requires the COG to provide data assumptions from their projections, including, if available, the following data for the region:

    a) Anticipated household growth associated with projected population increases;

    b) Household size data and trends in household size;

    c) The percentage of households that are overcrowded, as defined, and the overcrowding rate for a comparable housing market, as defined;

    d) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures;

    e) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs, as specified;

    f) Other characteristics of the composition of the projected population;

    g) The relationship between jobs and housing, including any imbalance between jobs and housing;

    h) The percentage of households that are cost burdened and the rate of housing cost burden for a healthy housing market, as defined; and

    i) The loss of units during a declared state of emergency during the planning period immediately preceding the relevant housing element cycle that have yet to be rebuilt or replaced at the time of the data request. (GC 65584.01(b)(1))

4) Allows HCD to accept or reject the information provided by the COG in 3) or modify its own assumptions or methodology based on this information. (GC 65584.01(b)(2))

5) Requires HCD, after consultation with the COG, to make determinations in writing on the assumptions for each of the factors in 3) and the methodology it shall use, and requires HCD to provide these determinations to the COG. (GC 65584.01(b)(2))

6) Requires HCD, after consultation with the COG, to make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined in 3)-5). Requires the RHND to reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan. (GC 65584.01(c)(1))

7) Requires HCD to determine the existing and projected housing need for each region at least two years prior to the scheduled revision of the housing element, and requires the appropriate COG, or HCD for cities and counties without a COG, to adopt a final regional

housing needs plan that allocates a share of the regional housing need to each city, county, or city and county at least one year prior to the scheduled revision for the region in 2) above. (GC 65584(b))

8) Requires each COG or delegate subregion, at least two years before a scheduled revision of the housing element in 2), to develop, in consultation with HCD, a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or subregion. (GC 65584.04(a))

9) Requires each city and county to adopt a housing element, which must contain specified information, programs, and objectives, including:

    a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality's existing and projected housing needs for all income levels; an inventory of land suitable and available for residential development; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need, among other things;

    b) A statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and

    c) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element, including actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the local government's share of RHNA for each income level that could not be accommodated on sites identified in the sites inventory without rezoning, among other things. (GC 65583(a)-(c))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "There are more than 181,000 Californians who are unhoused. I believe we have made good progress at both the state and local levels when it comes to planning for more housing, and with each RHNA cycle, we are refining the process. But we must do better. The California State Auditor's report published in March 2022 on HCD's RHNA determination process highlighted the need for accountability and transparency on HCD's methodology and assumptions. HCD's assumptions and methodology should be clear and accessible to stakeholders to ensure confidence in the process. That is why AB 2485 is focused on embedding inclusivity and transparency in HCD's engagement and outreach efforts which are critical to fostering the collaboration and trust that are essential to housing production in California."

California's Housing Crisis: California is in the midst of a severe housing crisis. Over two-thirds of low-income renters are paying more than 30% of their income toward housing, a "rent burden" that means they have to sacrifice other essentials such as food, transportation, and health care.[1] In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became homeless for the first time.[2] The crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership's (CHP) Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 687,000 available and affordable rental units in the state. Over three-quarters of the state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50% of their income toward rent each month. CHP estimates that the state needs an additional 1.3 million housing units affordable to very low-income Californians to eliminate the shortfall.[3] By contrast, production in the past decade has been under 100,000 housing units per year – including less than 10,000 units of affordable housing per year.[4]

***Adoption and Implementation of Housing Elements*:** One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan for new housing. Such planning is required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most of the high population parts of the state, and five years in areas with smaller populations. Localities must adopt a legally valid housing element by their statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including exposure to the "builder's remedy" as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or even court receivership.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region's housing needs allocation (RHNA), which is a figure determined by HCD through a demographic analysis of housing needs, existing housing stock, and population projections in consultation with DOF and the COG. HCD establishes its determination of each COG's regional housing targets across the state for the next five- or eight-year planning cycle. Each COG (or in some areas, HCD acting directly as COG) then sub-allocates the RHNA to each local government within the COG's jurisdiction, and in turn each jurisdiction uses its housing element to show how it will accommodate that number of new housing units, split out by income level and with a focus on certain special needs housing types and on affirmatively furthering fair housing.

It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will be slow or extremely difficult to build. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all

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[1] https://chpc.net/housingneeds/
[2] https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] https://chpc.net/housingneeds/
[4] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml

economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and not engage in exclusionary zoning practices.

RHND/RHNA Methodology: The RHND/RHNA process is used to determine how many new homes, and the affordability level of those homes, each local government must plan for in its housing element to cover the duration of the next eight-year planning cycle. The RHND is assigned at the COG level, while RHNA is suballocated to subregions of the COG or directly to local governments. RHNA is assigned via four income categories: very low-income (0-50% of AMI), low-income (50-80% of AMI), moderate income (80-120% of AMI), and above moderate income (120% or more of AMI).

The cycle begins with HCD and the Department of Finance projecting new RHND numbers every five or eight years, depending on the region. DOF produces population projections and the COG also develops projections during its RTP forecast. Then, 26 months before the housing element due date for the region, HCD must meet and consult with the COG and share the data assumptions and methodology that they will use to produce the RHND. The COG provides HCD with its own regional data on several criteria, including:

- Anticipated household growth associated with projected population increases;
- Household size data and trends in household size;
- The percentage of households that are overcrowded, as defined, and the overcrowding rate for a comparable housing market, as defined;
- The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures;
- The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs, as specified;
- Other characteristics of the composition of the projected population;
- The relationship between jobs and housing, including any imbalance between jobs and housing;
- The percentage of households that are cost burdened and the rate of housing cost burden for a healthy housing market, as defined; and
- The loss of units during a declared state of emergency during the planning period immediately preceding the relevant housing element cycle that have yet to be rebuilt or replaced at the time of the data request.

HCD can take this information and use it to modify its own methodology, if it agrees with the data the COG produced, or can reject it if there are other factors or data that HCD feels is better or more accurate. Then, after a consultation with the COG, HCD makes written determinations on the data it is using for each of the factors bulleted above, and provides that information in writing to the COG. HCD uses that data to produce the final RHND. The COG must then take the RHND and create an allocation methodology that distributes the housing need equitably amongst all the local governments in its region. The RHNA methodology is statutorily obligated to further all of the following objectives:

1) Increase the housing supply and mix of housing types, tenure, and affordability in all cities and counties within the regional in an equitable manner, which must result in each jurisdiction receiving an allocation of units for low- and very low-income households;
2) Promote infill development, socioeconomic equity, the protection of environmental and agricultural resources, and achievement of regional climate change reduction targets;
3) Promote an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction;
4) Allocate a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category; and
5) Affirmatively further fair housing.

In past housing element cycles, RHNA had been criticized as being a political rather than a methodologically sound, data-driven process. In the past, jurisdictions with a higher share of wealthier, whiter residents were more likely to have received lower allocations of moderate and lower income housing, while more diverse cities sometimes received higher allocations of those categories. The Legislature made a number of changes to the RHND, RHNA, and housing element process over the past several years to strengthen the law and restrict the ability of jurisdictions to evade their housing obligations.

2022 RHNA Audit: In a March 2022 letter to the Legislature, the California State Auditor wrote:

> As directed by the Joint Legislative Audit Committee, my office evaluated the Regional Housing Needs Assessment (needs assessment) process that the Department of Housing and Community Development (HCD) uses to provide key housing guidance for the State's local governments. The availability of sufficient housing is of vital statewide importance, and HCD's needs assessments are what allow jurisdictions to plan for the development of that housing. Overall, our audit determined that HCD does not ensure that its needs assessments are accurate and adequately supported.
>
> In reviewing the needs assessments for three regions, we identified multiple areas in which HCD must improve its process. For example, HCD does not satisfactorily review its needs assessments to ensure that staff accurately enter data when they calculate how much housing local governments must plan to build. As a result, HCD made errors that reduced its projected need for housing in two of the regions we reviewed. We also found that HCD could not demonstrate that it adequately considered all of the factors that state law requires, and it could not support its use of healthy housing vacancy rates. This insufficient oversight and lack of support for its considerations risks eroding public confidence that HCD is informing local governments of the appropriate amount of housing they will need.
>
> HCD's needs assessments also rely on some projections that the Department of Finance (Finance) provides. While we found that most of Finance's projections were reasonably accurate, it has not adequately supported the rates its uses to project the number of future households that will require housing units in the State. Although these household projections are a key component in HCD's needs assessments, Finance has not conducted a proper study or obtained formal recommendations from experts it consulted to support its assumptions in this area. Finance intends to reevaluate its assumptions related to household growth as more

detailed 2020 Census data becomes available later in the year, but without such efforts, Finance cannot ensure that it is providing the most appropriate information to HCD.[5]

In response to the audit's findings, HCD committed to, and completed, the following actions:

- Instituting a process for performing multiple reviews of data included in the RHND assumptions to improve quality control;
- Creating additional process documents to provide evidence of adequate consideration of all factors required by state law in its needs assessment;
- Completing a formal analysis of healthy vacancy rate trends to support their use of a 5% vacancy target rate for healthy housing markets; and
- Formalizing a technical assistance document to use when reviewing COG data on comparable regions and healthy housing markets.

DOF also committed to, and completed, the following actions:

- Reviewing its population projections for counties after 2020 Census data was made available and adjust the methodology as necessary; and
- Reviewing assumptions used in projecting household formation rates after the release of more detailed 2020 Census data and better document this review.[6]

Policy Considerations: This bill would require HCD to publish more of its data sources and methodology factors before finalizing the RHND. It would also require HCD to assemble and convene advisory panels for each future COG's RHND process and consult with those panels during the formation of the RHND methodology and in reviewing all the data points listed above when formulating the existing and projected housing need for each region for each future housing element cycle. This consultation is in addition to the existing consultation requirements that currently exist with the COGs themselves. The panel would have to be comprised of a US Census Bureau-affiliated practitioner, a data expert, and a representative from the COG. This would build in another layer of consultation and review to the RHND process, which may be somewhat duplicative given the department's existing COG consultation obligations, and could cause delays in the development of the final RHND, which HCD must provide to the COG no later than two years prior to the scheduled revision of the housing element. Though the panel consultation would be folded into the existing RHND timeline, it is unclear what HCD's obligations would be to respond to the advisory panel's feedback.

Arguments in Support: According to the California Association of COGs, "On behalf of the state's Councils of Governments that are a key partner to HCD in the Regional Housing Need Allocation (RHNA) process, we support AB 2485 for improvements it would make to the RHNA determination process. … One of the challenges of the RHNA process is that those that must implement it do not always understand the basis for the numbers. As a result, it is often panned as a mere state mandate even by those that understand the need to address the state's housing crises. A process that connects the housing determination to the state goal in an evidence-based way will lead to better policy implementation."

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[5] https://www.auditor.ca.gov/reports/2021-125/index.html#section1
[6] https://www.auditor.ca.gov/reports/2021-125/index.html#section6

Arguments in Opposition: None on file.

Related Legislation:

AB 2361 (Davies) of the current legislative session would reauthorize localities in the counties of Orange and San Diego to trade or transfer their RHNA in exchange for financial compensation. This bill is currently pending before this committee.

AB 2597 (Ward) of the current legislative session would modify future housing element due dates for the Southern California Association of Governments by creating two split phases of adoption due dates. This bill recently passed out of this committee on a 9-0 vote and is currently pending before the Assembly Committee on Local Government.

SB 828 (Wiener), Chapter 974, Statutes of 2018: Made a number of changes to the RHND and RHNA process, including adding more specificity to certain information regarding overcrowding rates, vacancy rates, and adding a requirement to include data on the percentage of cost burdened households in the RHND.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Southern California Association of Governments (Sponsor)
Association of California Cities - Orange County (ACC-OC)
California Association of Councils of Governments
California State Association of Counties
City of Chino Hills
City of Glendora
City of La Verne
City of Lomita
City of Monrovia
City of Palm Desert
City of Thousand Oaks
League of California Cities
Livable California
San Gabriel Valley Council of Governments

Opposition

None on file.

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2638 (Ward) – As Amended April 9, 2024

SUBJECT: Housing programs: financing

SUMMARY: Authorizes the Department of Housing and Community Development (HCD) to approve the payoff of an HCD loan in whole or part, prior to the end of its term, and the extraction of equity from a development for purposes approved by HCD. **Specifically, this bill:**

1) Authorizes HCD to approve the payoff of an HCD loan in whole or part, prior to the end of its term, and the extraction of equity from a development for purposes approved by HCD.

2) Allows a housing sponsor to use a loan and equity payments for all of the following eligible uses: the purchase of a limited partner interest of a tax credit investor in the project, payment of any unpaid deferred developer fee for the project, payment for necessary repairs and rehabilitation of the project, and the establishment or replenishment of department-approved project reserves.

3) Prohibits the extension, reinstatement, subordination, payoff, extraction, or investment, as specified, if it would result in a rent increase for tenants of a development over the annual adjustment to the tenants' rents under HCD's regulatory agreement.

4) Authorizes HCD to charge additional fees, as necessary, to cover its costs for processing restructuring transactions, and provides that the monitoring fees continue until the end of the term of HCD's regulatory agreement, as specified.

5) Limits developer fees that may be paid from equity payments from a restructured loan to the amount allowed by the California Tax Credit Allocation Committee (CTCAC) and to 25% of actual rehabilitation costs, as applicable.

6) Authorizes HCD to waive specified requirements in the regulatory agreement if a loan is paid off, including requiring occupancy and financial reports and governing the use of operating income and reserves for the development.

7) Provides that any extraction of equity from a development is subject to being shared with HCD in an amount determined solely by the department, but not greater than an amount proportionate to the amount of the department loan secured by such project to the total construction costs of the project.

8) Prohibits HCD from limiting the amount a housing sponsor may spend on supportive service costs paid as operating expenses, except as follows:

    a) The cost of staff supervision shall not exceed 10% of the cost of onsite staff salaries; and

    b) Administrative overhead expenses, including accounting and human relations, shall not exceed 15% of the total supportive services costs paid as operating expenses.

EXISTING LAW:

1) Allows HCD to approve an extension of a department loan, the reinstatement of a qualifying unpaid matured loan, the subordination of a department loan to new debt, or an investment of tax credit equity under various older HCD rental housing finance programs. (Health and Safety Code (HSC) Section 50560)

2) Allows HCD to approve an extension of a loan, the reinstatement of a qualifying unpaid matured loan, or the subordination of an HCD loan to new debt or an investment of tax credit equity if it determines that the project will have after rehabilitation of repairs, a potential remaining useful life equal to or greater than the term of the restructured loan. (HSC 50560)

3) Provides that HCD may subordinate its loan to refinance existing senior debt only as necessary for project feasibility and to reimburse borrower advances for predevelopment costs, recent capital improvements, and recent operating deficits. (HSC 50560)

4) Multi-family Housing Program (MHP) Regulations include the following prohibitions:

    a) Prohibits the Sponsor from encumbering, pledging, or hypothecating the Rental Housing Development, or any interest therein or portion thereof, or allow any lien, charge, or assessment against the Rental Housing Development without the prior written approval of HCD. HCD will not permit refinancing of existing liens or additional financing secured by the Rental Housing Development except to the extent necessary to maintain or improve the Fiscal Integrity of the Project, to maintain Affordable Rents, or to decrease Rents and for no other purpose, including, but not limited to, cash payments to the Sponsor, repayment of general partner loans or of limited partner loans, or for limited partner buyouts. Notwithstanding the general provisions in UMR Section 8308(g), this special condition controls, in that no MHP reserve balance can fund a limited partner buyout or exit.

    b) No loan may be paid off prior to maturity without the prior written consent of the Department in its sole discretion, which consent shall be subject to conditions deemed necessary to ensure compliance with the Program requirements. All of the loan documents, including the Regulatory Agreement and Deed of Trust, shall continue in full force and effect notwithstanding any prepayment, in whole or in part, or the loan. (California Code of Regulations (CCR), Title 25, Subchapter 4, MHP Regulations 7322 (d)-(e))

5) The Loan Portfolio Restructuring Program includes the following prohibition on cash payments to program sponsors:

    a) Except as noted in this subsection, Project sales shall not involve a cash payment to the selling party, or to any party related to or affiliated with the selling. The Sponsor may not cash out their equity. The exception to this rule applies to cases where a cash payment to the seller is held in a restricted account, is contributed to the project during the development period, and remains with the project as permanent funding. In addition, any Sponsor loans related to the Restructuring, including carryback financing, shall be payable only out of sponsor distributions. (Loan Portfolio Restructuring Program Guidelines 112 (h))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, **"**Affordable housing developers are challenged with accessing enough funds to break ground and develop essential, affordable housing. Often, they have to access various sources of funds, including loans from the Department of Housing and Community Development (HCD). However, when affordable housing developers access these loans, they are locked in and do not have any flexibilities. Under existing law, HCD has the authority to approve any prepayment of affordable housing loans; however, HCD has indicated that it will not currently approve any adjustments to its loans. Allowing affordable housing projects to sell or refinance HCD loans will provide additional funds for the development of desperately needed affordable homes in California. AB 2638 will require, under certain conditions, HCD to allow the sales and refinancing of HCD financed properties, unlocking millions of dollars by allowing repayments or partial repayments of HCD loans. Any sale or refinancing of HCD loans would include an agreement that the affordable housing development remains affordable for the duration of the original loan period, ensuring the preservation of affordable housing."

Affordable Housing Finance: The state finances affordable multifamily rental housing using a combination of loans, tax credits, and private activity bonds. Unlike market rate housing, affordable housing does not have the cash-flow from rents to support traditional financing. Affordable housing is provided to tenants whose household income is below the area median income (AMI). To qualify, very low-income tenants must make 60% or less of the AMI and lower-income tenants must make only 80% or less of AMI. Tenants in affordable housing are only required to pay 30% of their income toward rent, so the state provides enough long term subsidy to reduce the overall debt service on a development. HCD loans serve as the permanent financing that comes in once a development is complete to take out the predevelopment and construction loans a developer took on to construct the development. HCD loans are secured with a lien in first position on the property. Developments are also subject to a 55-year recorded regulatory agreement which runs with the project. If a developer pays off an HCD loan before the covenants expire, the regulatory agreement is not extinguished and the developer must continue to provide the units at an affordability rent for the length of the regulatory agreement to lower-income tenants.

HCD Prepayments and Equity Withdrawals: Developers with older HCD loans would like the option to sell developments with MHP loans and pay off the loans or to refinance the loans to take cash out to pay developer fees, rehabilitate a development, or re-deploy the funds to develop more affordable housing. This could generate millions of dollars to create new affordable housing.

MHP regulations suggest that HCD does have some discretion to allow for prepayment and limited ability to allow for a refinance of a loan:

> 25 CCR § 7322 (d) prohibits a MHP development sponsor from refinancing or allowing any new liens or assessments on the development without HCD's prior written approval. Subject to the regulations, HCD may allow refinancing of existing liens or additional financing

secured by the development to the extent necessary to maintain or improve the fiscal integrity of the project, to maintain affordable rents, or to decrease rents.

25 CCR § 7322 (e) prohibits a MHP loan from being paid off prior to maturity without the prior written consent of the Department in its sole discretion, which consent shall be subject to conditions deemed necessary to ensure compliance with the Program requirements.

HCD also administers a Loan Portfolio Restructuring Program (LPRP) to preserve and rehabilitate existing HCD-funded developments, including those with MHP loans. To qualify, developments must have expired regulatory agreements or the regulatory agreements must be set to expire by 2032. The LPRP does not allow cash payments to the developer or any cash-out of their equity except if the cash payment is held in a restricted account, contributed to the project during the development period, and remains with the project as permanent funding.

This bill would authorize HCD to approve the payoff of a department loan in whole or part before the end of its term and the extraction of equity from a development for purposes approved by the department. Any modification to the loan or equity payment to the developer could not result in in a rent increase for tenants of a development over and above the annual adjustment to the tenants' rents under the department's regulatory agreement.

Supportive Services: The MHP program provides loans to permanent supportive housing developments that provide both housing and supportive services to people experiencing homelessness. The loan is long-term and an equity investment in the development which keeps the rents at very low or extremely low levels. When an applicant applies for a loan, they can request funds to capitalize the operating reserves, or additional funds that are provided to support the supportive services and staff to provide supportive services for the development. HCD currently caps the amount of operating reserves that can be dedicated to supportive services. This bill would require HCD to eliminate the cap in regulations governing MHP. Using MHP funds to fund supportive services reduces the overall amount available for constructing affordable housing; however, it is a necessary trade off because there very limited long-term funding sources available for supportive services for supportive housing.

***Arguments in Support*:** According to the sponsor, the California Council for Affordable Housing, "AB 2638 would allow HCD to approve the payoff of a department loan prior to the end of its term, as well as the extraction of equity from a development project. In doing so, this would unlock millions of dollars in loan repayments for HCD to increase the stock of desperately needed affordable homes. AB 2638 allows refinancing or sales of HCD financed projects to tum loan repayments into affordable housing opportunities. This is a major step in working to alleviate the housing crisis."

***Arguments in Opposition*:** None on file.

***Related Legislation*:**

AB 515 (Ward) of 2023 would have required HCD, to the extent permitted under federal law and the California Constitution, to allow prepayment of any loans related to housing or housing projects administered by HCD, as specified. This bill was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Council for Affordable Housing (Sponsor)
California Housing Partnership Corporation

Opposition

None on file.

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

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2663 (Grayson) – As Amended March 19, 2024

SUBJECT: Affordable housing fees: reports

SUMMARY: Requires local agencies that collect inclusionary housing in-lieu fees to post information about the fees collected and spent on their internet website. Specifically, **this bill**:

1) Defines "affordable housing fees" as inclusionary housing zoning in-lieu fees.

2) Defines "local agency" as a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.

3) Requires local agencies that collect affordable housing in-lieu fees to annually post the following information on their website, beginning January 1, 2026:

    a) The amount of affordable housing in-lieu fees collected in the previous year; and,

    b) The intended use for any affordable housing fees collected, if applicable.

4) Each local agency collecting affordable housing in-lieu fees must also post the following information every five years, beginning January 1, 2026:

    a) The amount of affordable housing in-lieu fees collected in the past five years; and,

    b) The projects the affordable housing fees supported.

EXISTING LAW:

1) Authorizes local governments to impose inclusionary housing requirements on residential developments in the form of on-site inclusionary housing requirements, through the payment of inclusionary housing in-lieu fees, and/or through off-site construction of affordable units. (Government Code (GOV) Section 65850).

2) Establishes the Mitigation Fee Act (GOV 66000-66025) that requires a local agency to do all of the following:

    a) When establishing, increasing, or imposing a fee on a development project, the local agency must:

        i. Identify the purpose of the fee;

        ii. Identify the use to which the fee is to be put;

        iii. Determine how there is a nexus between the fee's use and the type of development project on which the fee is imposed; and

iv. Determine how there is a nexus between the need for a public facility and the type of development project on which the fee is imposed.

b) After a fee is collected, the local agency must:

i. Deposit development project fees collected in a separate capital facilities account to avoid commingling with other funds, and use these fees, including any interest earned, solely for their intended purpose;

ii. Provide annual public reports detailing fee information, including balances, collections, expenditures, and specific improvements funded by the fees;

iii. Hold a public meeting to review the annual report, with notice provided to interested parties;

iv. Make specified findings with respect to any unexpended portions of accounts established under the Act every five years, whether the funds are committed or uncommitted; and,

v. Complete the financing of public improvements once sufficient funds have been collected. This includes identifying an approximate date when construction will be commenced, and refunding any unexpended fees if the necessary findings are not made.

3) Requires a city, county, or special district that has an internet website to make information available on its internet website, including the current schedule of fees, exactions, and affordability requirements imposed by that city, county, or special district, applicable to a proposed housing development project. (GOV 65940.1)

FISCAL EFFECT: None.

COMMENTS:

The Mitigation Fee Act: Development fees serve many purposes and can be broadly divided into two categories: service fees and impact fees. Service fees cover staff hours and overhead, and are used to fund the local agency's role in the development process such as paying for plan reviews, permit approvals, inspections, and any other services related to a project moving through various local departments. Impact fees refer generally to fees that offset the public costs of new infrastructure incurred by the larger community. The Mitigation Fee Act governs the imposition, collection, and use of impact fees collected by local governments when reviewing and approving development proposals.

Key aspects of the Mitigation Fee Act include:

1. **Nexus Requirement**: The Act requires a clear "nexus" or connection between the fee charged and the impact created by the development. This means that the fees collected must be used to address the specific impacts that the new development is expected to have on public facilities and services.

2. **Proportionality**: The fees charged must be proportional to the impact of the development.

3. **Accountability**: Local governments are required to establish separate accounts for the fees collected and to use the funds solely for the intended purposes. They must also provide annual reports on the status of the fees, including the balance and how the funds have been used.

4. **Timing of Fee Payment**: The Act specifies when fees can be collected, generally at the time of final inspection or when certificate of occupancy is issued, with some exceptions.

5. **Refunds**: If the fees collected are not used within five years, and specific findings are not made, the Act provides for the refund of the fees.

The Mitigation Fee Act plays a crucial role in ensuring that new developments contribute to the cost of expanding and maintaining public infrastructure and services, while also providing a legal framework to ensure that fees are fair, transparent, and directly related to the impacts of the development.

Inclusionary Housing: Inclusionary housing is a policy tool that encompasses both inclusionary zoning and the payment inclusionary housing in-lieu fees, aimed at increasing the supply of deed-restricted affordable homes in new residential developments. Inclusionary zoning requires developers to allocate a certain percentage of units in new housing development as affordable to low- and moderate-income households, promoting socioeconomic diversity and equitable access to housing. In-lieu fees offer developers the flexibility to contribute financially to local affordable housing funds instead of integrating affordable units directly into their developments. These fees are then used by local jurisdictions to finance the development of affordable housing elsewhere in the community.

The legal framework for inclusionary housing in California has evolved over the years, marked by significant legislative and judicial developments. One pivotal court case was *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009) 175 Cal.App.4th 1396*, which challenged the ability of local governments to enforce inclusionary zoning requirements on rental housing developments. The court's decision in this case limited the application of inclusionary zoning policies, leading to a push for legislative action to restore local authority.

In response, AB 1505 (Bloom) was enacted in 2017. This legislation reaffirmed the power of local governments to mandate the inclusion of affordable housing units in new rental projects, subject to certain conditions. AB 1505 authorized local governments to impose inclusionary housing requirements on residential developments in the form of on-site inclusionary housing requirements, through the payment of inclusionary housing in-lieu fees, and/or through off-site construction of affordable units, with some parameters. AB 1505 effectively overturned the limitations imposed by the Palmer decision and provided a clearer legal basis for inclusionary housing policies in California.

Furthermore, the California Supreme Court's ruling in *California Building Association v. City of San Jose (2015) 61 Cal.4th 435*, upheld the validity of inclusionary housing ordinances, reinforcing the principle that such requirements are within the purview of local governments' land use regulatory authority to promote public welfare.

Inclusionary housing policies, including both inclusionary zoning and in-lieu fees, are one tool through which local governments can increase the supply of deed-restricted affordable housing,

although it is critical for jurisdictions using this tool to set the inclusionary rate so that it does not diminish financial feasibility for housing developments.

The need for transparency in the allocation and expenditure of inclusionary housing in-lieu fees collected by local governments is underscored by recent activity local governments. In Cupertino, a third party investigation discovered that an "accounting error" led to the misuse of over $100,000 from the City's $5.2 million below-market-rate housing fund to pay legal fees related to a recent housing lawsuit.

There is clearly the need for increased transparency and clarity at the local level surrounding the use of inclusionary housing in-lieu fees to ensure that funds collected are used promptly, effectively, and appropriately. The state and local governments currently face difficult budgetary environments and a slowdown in local housing permitting and construction,[1] at a time when the state has a deficit of over 1 million affordable homes.[2] It is critical to ensure that existing affordable housing funds are being spent to increase our affordable housing supply, and to increase transparency into the use of these funds to allow for increased advocacy at the local level should an adequate pipeline for these funds not be developed.

Arguments in Support: According to Habitat for Humanity California, "AB 2663 would help enhance transparency and accountability on inclusionary housing in-lieu fees. The bill would require any local agency that collects inclusionary housing in-lieu fees to provide annual reports on how much was collected in fees and if the fees have been intended to be used for a project, if any. Additionally, the bill would require a local agency to provide a five-year report on the amount of inclusionary housing fees that have been collected over and what projects the funds have been spent on. By making this information available and accessible, this bill will help to ensure that fees collected in the development process are well accounted for and implemented effectively during our housing affordability crisis."

Arguments in Opposition: None on file.

Related Legislation:

AB 602 (Grayson), Chapters 347, Statutes of 2021. This bill established several new requirements for local governments in connection with adopting and imposing fees and exactions, including new nexus study and capital facilities planning obligations. The bill also requires local governments to request fee and exaction information from developers and then post whatever information is voluntarily provided on the local agency's to increase transparency with respect to the overall level of fees and exactions imposed on new housing in the jurisdiction.

AB 1483 (Grayson), Chapter 662, Statutes of 2019. This bill requires a city, county, or special district to maintain on its internet website, as applicable, a current schedule of fees, exactions, and affordability requirements imposed by the city, county, or special district, including any dependent special district and annual fee reports or annual financial reports, as specified. The bill

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[1] HCD Annual Progress Report (APR) Data Dashboard: https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-implementation-and-apr-dashboard
[2] HCD 2022 Statewide Housing Plan Update: https://statewide-housing-plan-cahcd.hub.arcgis.com/

requires a city, county, or special district to provide on its internet website an archive of impact fee nexus studies, cost of service studies, or equivalent, as specified.

AB 1505 (Bloom), Chapter 376, Statutes of 2017. This bill authorized the legislative body of any city or county to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Habitat for Humanity California

Opposition

None on file.

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2667 (Santiago) – As Amended April 9, 2024

SUBJECT: Affirmatively furthering fair housing: housing element: reporting

SUMMARY: Makes changes to the housing element and Annual Progress Report (APR) related to the requirement to affirmatively further fair housing (AFFH). Specifically, **this bill**:

1) Requires the number of units approved and disapproved that must be reported by a local government in the APR to also include a subcategory of the number of those units located within an "opportunity zone," defined to mean a highest or high resource area pursuant to the most recent "CTCAC/HCD Opportunity Map" published by the California Tax Credit Allocation Committee (CTCAC) and the Department of Housing and Community Development (HCD).

2) Requires the assessment of fair housing in a jurisdiction to be completed before the planning agency makes its first draft revision of a housing element available for public comment, as specified.

3) Requires HCD to develop a standardized reporting format for programs and actions taken to AFFH in the housing element, and requires the format to enable the reporting of specified existing AFFH assessment components, and at a minimum include the following fields:

    a) Timelines for implementation;

    b) Responsible party or parties;

    c) Resources committed from the local budget to AFFH;

    d) Action areas; and

    e) Potential impacts of the program.

4) Requires local governments to utilize the standardized report format in 3) for the seventh and each subsequent revision of the housing element.

5) Requires a local government to make a draft of its inventory of sites available to HCD and the public and post the draft inventory on its website at least 90 days prior to the adoption of a revision of its housing element for the seventh and each subsequent revision.

EXISTING LAW:

1) Requires each city and county to adopt a housing element, which must contain specified information, programs, and objectives, including:

    a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality's existing and projected housing needs for all income levels; an inventory of land

suitable and available for residential development with an analysis of the relationship of the sites to the duty to AFFH; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need, among other items;

b) A statement of the community's goals, quantified objectives, and policies relative to AFFH and to the maintenance, preservation, improvement, and development of housing; and

c) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element, including actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the local government's share of the regional housing need for each income level that could not be accommodated on sites identified in the sites inventory without rezoning, among other things. (Government Code (GC) Section 65583(a)-(c))

2) Requires the housing element to AFFH in accordance with specified law, and to include an assessment of fair housing in the jurisdiction that must include all of the following components:

a) A summary of fair housing issues in the jurisdiction and an assessment of the jurisdiction's fair housing enforcement and fair housing capacity;

b) An analysis of available federal, state, and local data and knowledge to identify integration and segregation patterns and trends, racially or ethnically concentrated areas of poverty and affluence, disparities in access to opportunity, and disproportionate housing needs, including displacement risk. Requires the analysis to identify and examine such patterns, trends, areas, disparities, and needs, both within the jurisdiction and comparing the jurisdiction to the region, based on race and other characteristics protected by the California Fair Employment and Housing Act;

c) An assessment of the contributing factors, including the local and regional historical origins and current policies and practices, for the fair housing issues identified under 2)a) and 2)b); and

d) An identification of the jurisdiction's fair housing priorities and goals, which may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as placed-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement. (GC 65583(c)(10)(A))

3) Requires a planning agency to submit a draft housing element revision to HCD at least 90 days prior to adoption of a revision of its housing element pursuant to statutory deadlines, or at least 60 days prior for a draft amendment. Requires the local government to make the

first draft revision of the housing element available for public comment for at least 30 days and, if any comments are received, requires the local government to take at least 10 business days after the 30-day public comment period to consider and incorporate public comments into the draft revision prior to submitting it to HCD. For any subsequent draft revision, the local government must post the draft on its website and email a link to all individuals and organizations that have previously requested notices related to the housing element at least seven days before submitting the draft revision to HCD. (GC 65585(b)(1))

4) Requires HCD to review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision or within 60 days of receipt of a subsequent draft amendment or an adopted revision or adopted amendment to a housing element. Prohibits HCD from reviewing the first draft submitted for each housing element revision until the local government has made the draft available for public comment for at least 30 days and, if comments were received, has taken at least 10 business days to consider and incorporate public comments. (GC 65585(b)(3))

5) Requires HCD, in its written findings, to determine whether the draft element or draft amendment substantially complies with housing element law. (GC 65585(d))

6) Requires HCD to review adopted housing elements or amendments and report its findings to the planning agency within 60 days. (GC 65585(h))

7) Requires a planning agency to provide an APR to the legislative body, the Office of Planning and Research, and HCD by April 1 of each year that includes certain information, including:

    a) The progress in meeting its share of the regional housing needs, including the need for extremely low-income households, and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing included in the housing element;

    b) The number of housing development applications received in the prior year, including whether each housing development application is subject to a ministerial or discretionary approval process;

    c) The number of units included in all development applications in the prior year;

    d) The number of units approved and disapproved in the prior year;

    e) A listing of sites rezoned to accommodate that portion of the city or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the housing element's site inventory and any sites that may have been required to be identified under the No Net Loss Zoning law;

    f) The number of housing units demolished and new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category by area median income that each housing unit satisfies;

g) Specified information related to density bonus applications; and

h) Specified information related to Affordable Housing and High Road Jobs Act of 2022 applications. (GC 65400(a)(2)(A)-(M))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Californians continue to live through a serious housing crisis, and for our most vulnerable communities, the crisis is even greater. In 2018, I authored AB 686 to ensure local governments develop and implement their housing plans in a manner that affirmatively furthers fair housing. In 2021, I authored AB 1304 to strengthen fair housing law by clarifying enforcement provisions and requiring historical and regional analyses of AFFH issues. Despite these important changes in state law, during the sixth housing element update cycle many cities proposed AFFH programs that, while well-intentioned, were unlikely to enable mobility into higher opportunity neighborhoods or result in meaningful investment in historically disinvested neighborhoods. This bill will further empower the state and members of the public to hold local governments accountable to their obligations and expand housing access in high opportunity communities by providing stakeholders with more tools and timely information to ensure local governments are taking meaningful action to affirmatively further fair housing."

Federal AFFH Rule: Since its enactment in 1968, the federal Fair Housing Act has directed the Department of Housing and Urban Development (HUD), other federal agencies, and program participants to affirmatively further the Act's goals of promoting fair housing and equal opportunity. In 2015, the Obama Administration issued the AFFH Rule to clarify what it means to "affirmatively further fair housing." The Rule incorporated an "Assessment of Fair Housing" process into broader existing planning processes to help HUD grantees identify issues such as fair housing issues pertaining to patterns of integration and segregation; racially and ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs. HUD grantees were required to submit their Assessments to HUD or potentially lose HUD funding.

On January 5, 2018, under President Trump, HUD largely suspended the obligation to submit an Assessment, effectively postponing implementation of the AFFH Rule until 2025. In July 2020, the 2015 AFFH Rule was repealed.

On January 26, 2021, President Biden issued a memorandum directing HUD to examine the effect of the previous Administration's actions against the AFFH Rule and the effect that it has had on HUD's statutory duty to both ensure compliance with the Fair Housing Act and to affirmatively further fair housing. The memo also ordered HUD to take the necessary steps to implement the Fair Housing Act's AFFH requirements and to prevent practices that have a disparate impact. On June 10, 2021, HUD published an interim final rule, which went into effect on July 31, 2021, to restore implementation of the AFFH Rule.

AFFH in California: California's Fair Employment and Housing Act (FEHA) prohibits employment and housing discrimination based on the protected classes. FEHA further provides that it is a civil right to be able to pursue and maintain housing or employment without facing discrimination. If a dispute is not resolved, the Civil Rights Department may take legal action if

evidence supports a finding of discrimination. In housing discrimination cases, an individual also has the right to file a lawsuit on their own behalf. While FEHA does not explicitly include an AFFH obligation, it does prohibit discrimination through public or private land use practices, decisions, and authorizations due to membership in a protected class. Discrimination includes restrictive covenants, zoning laws, details of use permits, and other actions authorized under the Planning and Zoning Law that make housing opportunities unavailable.

After the 2015 AFFH Rule was enacted, concerns arose about whether it would be preserved going forward. To address these concerns, the Legislature passed and the Governor signed AB 686 (Santiago), Chapter 958, Statutes of 2018, which established an AFFH framework at the state level. This framework remained in place when the Trump Administration repealed the AFFH Rule in 2020.

***Adoption and Implementation of Housing Elements*:** One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan for new housing. Such planning is required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most highly populated parts of the state, and five years in areas with smaller populations. Cities must adopt a legally valid housing element by their statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including exposure to the "builder's remedy" as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or court receivership.

It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment locally for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will be slow to build. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and that it not engage in exclusionary zoning practices or perpetuate housing discrimination patterns or impediments to fair housing.

Housing Element AFFH Obligations: Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region's housing needs and to AFFH. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share, after performing an AFFH analysis of those sites. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element. The requirement to AFFH also contains a mandate to perform an assessment of fair housing in the jurisdiction that has to include several components, including an identification of the jurisdiction's fair housing priorities and goals, metrics and milestones for determining what fair housing results will be achieved via the housing element, and strategies and actions to implement those priorities and goals. The goals may include items like enhancing mobility strategies, encouraging development of new affordable housing in

opportunity areas, preserving existing affordable housing, protecting residents from displacement, and place-based strategies to encourage community revitalization.

This bill would require the AFFH assessment to be completed before the planning agency makes its first draft housing element available for public comment, and would require HCD to develop a standardized reporting format for programs and actions taken to AFFH. The reporting format must include a variety of fields, including timelines for implementation, responsible parties, local budgetary resources committed to AFFH, and potential impacts of the program. Local governments would be required to use this reporting format for the seventh cycle and beyond.

This bill would also require the local government to post a draft of the inventory of sites on its website and provide the draft inventory to HCD and the public at least 90 days prior to adopting the housing element for the seventh cycle. This would match the current law timeline that requires local governments to submit a draft of the housing element itself to HCD, the public, and interested stakeholders at least 90 days before adoption.

Annual Progress Reports: Current law requires all local jurisdictions to provide housing information annually to HCD via the APR, including the following information from the prior year and/or for the current eight-year housing element cycle:

- The number of housing development applications received, and whether those applications are subject to ministerial or discretionary approval;
- The number of units included in all development applications;
- The number of units approved and disapproved;
- For each income category, the number of net new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, a building permit, or a certificate of occupancy;
- A unique site identifier (such as assessor's parcel number) for each entitlement, building permit, or certificate of occupancy;
- The number of applications submitted under the Affordable Housing and High Road Jobs Act of 2022; and
- The overall progress in meeting its share of RHNA.

This bill would expand the requirement related to the number of units approved and disapproved, to also include a subcategory of the number of those units located within an opportunity zone, as identified by the CTCAC/HCD Opportunity Map.[1]

Arguments in Support: According to the Inner City Law Center, the bill's cosponsor, "Since the enactment of AB 686 (Chapter 958, Statutes of 2018) and AB 1304 (Chapter 357, Statutes of 2021), local governments across the state have developed a myriad of new housing programs, however, analysis of the proposed programs suggests that most of them will likely have minimal impact. Proposed programs often had long or unclear timelines, vague objectives, and in many cases represent minimal commitments of staff time or resources. Many proposed AFFH programs do not focus on the land use and zoning policy changes that would make progress towards the spirit of fair housing law, despite local governments' wielding greater control in these areas. Most cities continue to identify potential sites for low-income housing in their less

[1] https://www.treasurer.ca.gov/ctcac/opportunity.asp

affluent neighborhoods, near existing multifamily zones, thus exacerbating the status quo of segregation rather than facilitating integration. The way in which local governments present their AFFH programs in housing plans is also inconsistent and incomplete, making evaluation of potential impact challenging."

Arguments in Opposition: None on file.

Related Legislation:

AB 1304 (Santiago), Chapter 357, Statutes of 2021: Reaffirmed that the state, local jurisdictions, and public agencies involved in housing-related matters have a mandatory duty to take meaningful affirmative steps to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. The bill also provided additional details regarding what these entities must take into account when carrying out that duty to AFFH.

AB 686 (Santiago), Chapter 958, Statutes of 2018: Required state departments and agencies, cities, counties, public housing authorities, and other public entities to AFFH in all of their housing and community development-related activities. In addition, the bill required cities and counties to undertake an AFFH analysis and meet other related requirements as part of the development of their housing elements.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA (Sponsor)
Inner City Law Center (Co-Sponsor)
California YIMBY
Housing Action Coalition
YIMBY Action

Opposition

None on file.

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2694 (Ward) – As Amended April 9, 2024

SUBJECT: Density Bonus Law: residential care facilities for the elderly

SUMMARY: Makes clear that Residential Care Facilities for the Elderly (RCFEs) qualify as senior citizen housing developments under Density Bonus Law. Specifically, **this bill**:

1) Clarifies that the definition of "a senior citizen housing development" under Density Bonus Law includes a RCFE, as defined in Health and Safety Code Section (HSC) 1569.2.

2) Defines "shared housing unit" for purposes of a RCFE to include a unit without a common kitchen where a room is shared by unrelated persons and meets the "minimum room area," as specified.

EXISTING LAW:

1) Defines a "Residential care facility for the elderly" to mean a housing arrangement chosen voluntarily by persons 60 years of age or over, or their authorized representative, where varying levels and intensities of care and supervision, protective supervision, personal care, or health-related services are provided, based upon their varying needs, as determined in order to be admitted and to remain in the facility. Persons under 60 years of age with compatible needs may be allowed to be admitted or retained in a RCFE, as specified. (HSC 1569.2)
2) Defines "concession or incentive" as:
    a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required, that results in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units;

    b) Approval of specified compatible mixed-use zoning in conjunction with the housing project that will reduce the cost of development; and

    c) Other regulatory incentives or concessions proposed by the developer or the local government that results in identifiable and actual cost reductions to provide for affordable housing. (GOV 65915)

3) Requires a city, county, or city and county to grant a concession or incentive requested by an applicant unless the city, county, or city and county makes a written finding based upon substantial evidence of any of the following:

    a) The concession or incentive does not result in identifiable and actual cost reductions necessary to support the affordable housing costs or rents for the affordable housing units required;

b) The concession or incentive would have a specific, adverse impact upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households; or

c) The concession or incentive would be contrary to state or federal law.

4) Requires cities and counties to grant a density bonus, based on a specified formula, when an applicant for a housing development of at least five units seeks and agrees to construct a project that will contain at least one of the following:

a) Ten percent of the total units of a housing development for lower-income households;

b) Five percent of the total units of a housing development for very low-income households;

c) A senior citizen housing development or age-restricted mobilehome park;

d) Ten percent of the units in a common interest development (CID) for moderate-income households, provided the units are available for public purchase;

e) Ten percent of the total units for transitional foster youth, disabled veterans, or homeless persons;

f) Twenty percent of the total units for lower-income students in a student housing development, as specified; or

g) One hundred percent of all units in the development for lower-income households, except that up to 20 percent of the units may be for moderate-income households. (GOV 65915)

5) Defines "shared housing" for purposes of Density Bonus Law to mean a residential or mixed-use structure, with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this law, the local definition shall apply to the extent that it does not conflict with the requirements of this law.

6) Provides that a "shared housing building" may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25 percent of the floor area of the shared housing building. A shared housing building may include 100 percent shared housing units.

7) Provides that "shared housing unit" means one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, that meets the "minimum room area" specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of "guestroom" in Section R202 of the California Residential Code. If a local ordinance further restricts the attributes of a shared housing building beyond

the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of this section.

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Our state is facing a silver tsunami as our population ages creating a demand for senior housing that outpaces supply. RCFEs offer a solution for seniors who need assistance with daily activities but wish to live in a less clinical setting. AB 2694 will help developers better utilize Density Bonus Law for senior housing developments, by clarifying that RCFE's qualify for the benefits of the law."

Density Bonus Law: DBL was originally enacted in 1979 as an incentive to encourage housing developers to produce affordable units which can be offered at below market-rates. In return for including a certain percentage of affordable units, housing developers receive the ability to add additional units for their project above the jurisdiction's allowable zoned density for the site (thus the term "density bonus"). In order to qualify for a density bonus a developer of multifamily housing (5+ units) must agree to build housing that includes at least one of the following:

- 10% of all units for lower-income households;
- 5% of all units for very low-income households,
- Specified senior housing;
- 10% of all units in a CID for moderate income individuals and families;
- 10% of all units for transition age foster youth, disabled veterans, or individuals experiencing homelessness; or
- 20% of all units for lower-income students within a student housing development.

The affordability requirements for units built via density bonus run for a minimum of 55 years. Additionally, DBL specifies concessions and incentives around development standards (e.g., architectural, height, setback requirements) and reductions in vehicle parking requirements that projects can receive to offset the cost of building affordable units. Both market rate and 100% affordable housing projects can use the provisions and all local governments are required to adopt a density bonus ordinance. However, failure to adopt an ordinance does not exempt a local government from complying with state DBL.

Senior Citizen Housing and Shared Housing: Density bonus law provides one density bonus for senior housing, but does not require a minimum affordability to qualify for the density bonus. Senior citizen housing development is defined as housing for seniors who are 55 years or older that has at least 35 units or a mobile home park that limits residency based on age for older persons. A senior development can also qualify as shared housing, as defined in density bonus law. Shared housing includes one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, used for permanent residence, that meets the "minimum room area" specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of "guestroom" in Section R202 of the California Residential Code. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this

section, the local definition shall apply to the extent that it does not conflict with the requirements of this section.

RCFEs: The Department of Health Care Services licenses RCFEs, sometimes called Assisted Living, which are non-medical facilities that provide room, meals, housekeeping, supervision, storage and distribution of medication, and personal care assistance with basic activities like hygiene, dressing, eating, bathing and transferring. RCFEs serve persons 60 years of age and older. RCFEs are not regarded as healthcare facilities, but social-based facilities. Individuals living in units have a lease with the provider and are considered as living in their own home, not in a healthcare setting. RCFEs are required to provide private or semi-private bathrooms, a dining room, or a common activities room that may also serve as a dining room.

This bill makes clear that RCFE's qualify under density bonus law and specifically, under the definition of shared housing. Seniors living in RCFEs may be sharing rooms with other un-related seniors, but the current definition of shared housing does not explicitly allow for unrelated individuals to share a room.

Arguments in Support: According to the sponsor, Leading Age of California, "The demographics of older adults across the state are rapidly changing. California is expected to have over 10.8 million individuals over the age of 60 by 2030 and by 2060 adults 60 and over will make up 30% of California's population. Despite the growth in our older adult population, California has lost 5,000 nursing home beds in the past five years. This is evidence of a shift in consumer preference to age in more community and home-like settings such as assisted living. Over the past decade, licensed assisted living and memory care has expanded to offer supportive personal care services in more residential-type buildings and programs. To ensure every older adult can age with independence and dignity, California must ensure that older adults have options for receiving long-term services and supports. We are sponsoring AB 2694 to expand access to assisted living throughout California to meet the needs of our growing older adult population. Density bonus is an important tool that encourages the development of affordable and senior housing. However, the current density bonus law is unclear and applied inconsistently to RCFE development across the state. AB 2694 seeks to clarify that RCFE development can qualify for density bonus provisions."

Arguments in Opposition: None on file.

***Related Legislation*:**

AB 3116 (Garcia) of the current Legislative session revises the existing density bonus for student housing developments. This bill is pending in the Assembly Housing and Community Development Committee.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

LeadingAge California (Sponsor)
American Planning Association, California Chapter

Opposition

None on file.

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

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2835 (Gabriel) – As Amended March 11, 2024

SUBJECT: Motels and hotels: publicly funded shelter programs

SUMMARY: Eliminates the sunset date on tenancy rules governing occupancy in interim homelessness programs operated out of privately owned hotels and motels.

EXISTING LAW: Establishes the Occupancy in Interim Homelessness Programs law, as follows:

1) Defines "motel or hotel" to mean a dwelling unit that an innkeeper retains a right of access to and control of, and that provides or offers all of the following services to all of the residents:

    a) Facilities for the safeguarding of personal property, as specified;

    b) Central telephone service, as specified; and

    c) Maid, mail, and room services. (Civil Code (CC) Section 1954.08(b))

2) Defines "shelter program" to mean a city-, county-, continuum of care-, state-, or federally funded shelter, interim housing, motel voucher, or emergency shelter program. (CC 1954.08(c))

3) Defines "shelter program participant" to mean an occupant of a motel, a hotel, or other shelter site whose occupancy is due to their participation in a shelter program. (CC 1954.08(f))

4) Defines "shelter program administrator" to mean a city, county, or continuum of care entity that retains an oversight role in ensuring compliance with program regulations and proper program administration. (CC 1954.08(d))

5) Provides that shelter program participants shall not have their continued occupancy in a motel, hotel, or a shelter site constitute a new tenancy and shall not be considered a tenant if the shelter program meets specified requirements. (CC 1954.09(a))

6) Provides that the specified requirements referenced in 5) do not apply to properties which are being converted from use as a motel or hotel, or from use as a shelter, interim housing, emergency shelter, or other interim facility to a permanent housing site from the date that the site receives a certificate of occupancy as a permanent housing site. (CC 1954.09(c))

7) Provides that specified building code regulations shall not be interpreted to limit the length of occupancy for shelter program participants. (CC 1954.091(a))

8) Emphasizes that this law must not be interpreted to confer or deny tenants' rights, but provides that a shelter program participant is entitled to:

a) Continued occupancy without creating a tenancy;

b) Not to be considered a person who hires for legal purposes;

c) Receipt of a written termination policy;

d) Disclosure of the termination procedure;

e) 30 days' notice prior to termination, except as specified; and

f) The right to appeal termination, as specified. (CC 1954.091(b))

9) Clarifies that a motel or hotel shall not be designated as a nontransient motel or a nontransient hotel for legal purposes solely as a result of a shelter program participant's occupancy in the motel or hotel beyond a 30-day period. (CC 1954.092(a))

10) Prohibits a hotel or motel from doing either of the following:

a) Adopting termination policies specifically for motel or hotel occupants who are shelter program participants that do not apply to other motel or hotel occupants who are not participating in a shelter program, impose restrictions on the ability of program participants to freely enter or exit the property or access certain areas or amenities of the property that do not apply to other motel or hotel occupants, or levy charges and fees, including fees for room card replacements, that do not apply to other motel or hotel occupants. Specifies that this is a minimum standard for shelter terminations and that shelter programs may provide greater rights to participants; and

b) Requiring shelter program participants to check out and reregister, move out of rooms or between rooms, or from the hotel or motel while actively enrolled in the shelter program unless their continued occupancy of the unit of the motel or hotel constitutes a clear and imminent threat to health and safety of the occupant. (CC 1954.092(b))

11) Sunsets as of January 1, 2025. (CC 1954.093)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "In 2022, the legislature passed AB 1991 (Gabriel), which delivered much-needed clarity and guidance regarding tenancy to motels, hotels, and shelter providers participating in programs that provide shelter to homeless individuals. Before the passage of the legislation, shelter programs had to 'shuffle' homeless individuals to new locations every 30 days, an extremely disruptive practice counterproductive to the goal of assisting this vulnerable community. AB 2835 seeks to make these critical changes permanent to ensure service providers, motels, hotels, and those experiencing homelessness have a clearly defined set of protections against arbitrary removal or relocation from shelter programs."

California's Housing Crisis: California is in the midst of a severe housing crisis. Over two-thirds of low-income renters are paying more than 30% of their income toward housing, a "rent burden" that means they have to sacrifice other essentials such as food, transportation, and health

care.[1] In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became homeless for the first time.[2] The crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership's (CHP) Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 687,000 available and affordable rental units in the state. Over three-quarters of the state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50% of their income toward rent each month. CHP estimates that the state needs an additional 1.3 million housing units affordable to very low-income Californians to eliminate the shortfall.[3] By contrast, production in the past decade has been under 100,000 housing units per year – including less than 10,000 units of affordable housing per year.[4]

Motels and Hotels as Temporary Shelter: During the pandemic, hotels and motels were used as temporary shelter for people experiencing homelessness who, because of poor health and living situations, might be at greater risk of contracting COVID or spreading it. In response to COVID, the federal government provided one-time funding to immediately house people experiencing homelessness at risk of contracting the virus. Project Roomkey reimbursed cities and counties from the Federal Emergency Management Agency (FEMA) to temporarily house people. Project Homekey provided funding to purchase hotels and motels and master-lease housing to house people experiencing homelessness.

Some local governments and continuum of care (CoCs) have continued contracting with hotels and motels to house people experiencing homelessness. Although this is temporary housing, due to the lack of available permanent supportive housing and affordable housing, some people are remaining in motels and hotels as semi-permanent tenants. Motel and hotels are defined as temporary housing under building standards. In addition, owners had previously been concerned that allowing a shelter program participant to remain in housing for longer than 30 days would qualify the program participant as a tenant. This caused frequent "shuffling" of those participants, which was very disruptive to individuals participating in shelter programs and unnecessarily consumed case manager and service provider resources as they frequently worked to find new accommodations for "shuffled" individuals.

AB 1991 (Gabriel), Chapter 645, Statutes of 2022, was sponsored by the Los Angeles Homelessness Services Authority, one CoC that utilizes this model of motel/hotel temporary housing – for example, via Mayor Karen Bass's Inside Safe program.[5] AB 1991 allowed hotels and motels to provide housing to people enrolled in a shelter program for longer than 30 days without establishing tenancy. AB 1991 established a standard that hotels and motels would be required to comply with in order to ensure tenants are adequately protected, and helped curb the need for "shuffling" participants by ensuring they were not treated as formal tenants but had appropriate safeguards around their vulnerable status. AB 1991 passed out of this committee without a sunset, but later amendments added a two-year sunset provision, meaning the law will expire on January 1, 2025. This bill would delete the sunset, thereby permanently extending the

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[1] https://chpc.net/housingneeds/
[2] https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] https://chpc.net/housingneeds/
[4] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml
[5] https://mayor.lacity.gov/InsideSafe

law's provisions for participants of hotel- and motel-based shelter programs. Allowing this law to elapse would simply reinstitute the "shuffling" practice once again, wasting time and resources the state and local governments cannot afford to expend simply trying to prevent program participants from accruing formal tenancy rights in what are fundamentally temporary housing situations.

Arguments in Support: According to the National Alliance to End Homelessness, the bill's sponsor, "The old 'shuffling' practice was disruptive to homeless individuals participating in shelter programs, unnecessarily consuming case manager and service provider resources as they frequently worked to find new accommodations for 'shuffled' individuals. AB 2835 makes the critical protections for hotels and motels, homeless service providers, and homeless individuals permanent by removing the sunset provisions of AB 1991. This bill will ensure that participating locations can continue providing housing services to homeless individuals without the legal risks that had once complicated or deterred participation in these programs."

Arguments in Opposition: None on file.

Related Legislation:

AB 1991 (Gabriel), Chapter 645, Statutes of 2022: Provides that hotels, motels, and homeless shelter programs can evict a guest who is a participant in a shelter program without the need to go through the unlawful detainer process in the courts even if the guest has stayed longer than 30 days, provided that the shelter program operates with specified characteristics.

REGISTERED SUPPORT / OPPOSITION:

Support

National Alliance to End Homelessness (Sponsor)
Corporation for Supportive Housing
Housing California
LA Family Housing
Safe Place for Youth
The United Way of Greater Los Angeles

Opposition

None on file.

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

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2893 (Ward) – As Amended March 21, 2024

SUBJECT: The Shared Recovery Housing Residency Program

SUMMARY: Establishes a certification process for recovery homes and adds a standard for recovery homes that meets the state's Housing First requirements. Specifically, **this bill**:

1) Includes the following definitions:

    a) "Housing first model" means housing that satisfies the core components of Housing First pursuant to Section 8255 of the Welfare and Institutions Code.

    b) "Recovery house" means a residence that serves individuals experiencing, or who are at risk of experiencing, homelessness or mental health issues and that does all of the following:

        i) Satisfies the core components of Housing First pursuant to Section 8255 of the Welfare and Institutions Code;

        ii) Uses substance use-specific services, peer support, and physical design features supporting individuals and families on a path to recovery from addiction; and

        iii) Emphasizes abstinence.

    c) "Trauma-informed practices" means a trauma-informed approach to care guided by the principles of safety, trustworthiness and transparency, peer support, collaboration and mutuality, empowerment and choice, and culture, historical, and gender issues.

2) Requires the Department of Health Care Services (DHCS) to oversee certification of recovery houses by establishing a criteria for the certification of recovery housing conditions under which a recovery home may be certified and regain certification.

3) Authorizes DHCS to charge a fee of not more than $1,000 for certifying recovery houses.

4) Establishes the Shared Recovery Housing Residency Program Fund to receive all funds collected for certifying recovery housing.

5) Authorizes recovery houses that are certified by DHCS to receive referrals from the department, its agencies, or contractors as housing available for persons experiencing or at risk of experiencing homelessness or mental health issues.

6) Prohibits recovery housing from providing services on-site, including, but not limited to, incidental medical services, as defined.

7) Adds provisions regarding recovery housing to the existing statute governing Housing First, including the following:

a) Allows state departments and agencies to fund recovery housing that use substance use-specific services, peer support, and physical design features supporting individuals and families on a path to recovery from addiction that emphasizes abstinence so long as the state program uses at least 75% of the funds for housing or housing-based services using a harm reduction model, and that recovery housing complies with the following:

   i) An individual or family is offered options and chooses recovery housing over housing offering a harm-reduction approach;

   ii) The recovery housing otherwise complies with all other components of Housing First, in existing law, including low barrier to entry;

   iii) Participation in a program is self-initiated;

   iv) Core components emphasize long-term housing stability and minimize returns to homelessness;

   v) Policies and operations ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint, as well as continuous, uninterrupted access to housing;

   vi) Holistic services and peer-based recovery supports are available to all program participants along with services that align with participants' choice and prioritization of personal goals of sustained recovery and abstinence from substance use.

   vii) The housing abides by local and state landlord-tenant laws governing grounds for eviction.

   viii) Relapse is not a cause for eviction from housing and tenants receive relapse support.

   ix) Eviction from recovery housing shall only occur when a tenant's behavior substantially disrupts or impacts the welfare of the recovery community in which the tenant resides. A tenant may apply to reenter the housing program if expressing a renewed commitment to living in a housing-setting targeted to people in recovery with an abstinence focus.

   x) If a tenant is no longer interested in living in a recovery housing model or the tenant is at risk of eviction, the housing program provides assistance in accessing housing operated with harm-reduction principles that is also permanent housing.

EXISTING LAW:

1) Establishes the California Interagency Council on Homelessness (Cal-ICH) with the purpose of coordinating the state's response to homelessness by utilizing Housing First practices. (Welfare and Institutions Code Section 8255)

2) Requires agencies and departments administering state programs created on or after July 1, 2017 to incorporate the core components of Housing First. (WIC 8255)

3) Defines "Housing First" to mean the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and that do not make housing contingent on participation in services. (WIC 8255)

4) Defines, among other things, the "core components of Housing First" to mean:

    a) Acceptance of referrals directly from shelters, street outreach, drop-in centers, and other parts of crisis response systems frequented by vulnerable people experiencing homelessness;

    b) Supportive services that emphasize engagement and problem-solving over therapeutic goals and service plans that are highly tenant-driven without predetermined goals;

    c) Participation in services or program compliance is not a condition of permanent housing tenancy;

    d) Tenants have a lease and all the rights and responsibilities of tenancy, as outlined in California's Civil, Health and Safety, and Government codes; and

    e) The use of alcohol or drugs in and of itself, without other lease violations, is not a reason for eviction. (WIC 8255)

5) Defines "recovery residence" to mean a residential dwelling that provides primary housing for individuals who seek a cooperative living arrangement that supports personal recovery from a substance use disorder and that does not require licensure by the department or does not provide licensable services. Provides that a recovery residence may include, but is not limited to, residential dwellings commonly referred to as "sober living homes," "sober living environments," or "unlicensed alcohol and drug free residences." (HSC 11833.05)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 2893 would direct the California Department of Healthcare Services (DHCS) to create a statewide certification program for recovery houses that would be in compliance with housing first policies under the federal Department of Housing and Urban Development (HUD) definition. This bill would instruct DHCS to create a certification program for these homes at a state level to standardize their care as well as reign in bad actors. This is a working model that the state can use housing funds for to solve its acute homelessness and addiction crisis."

Homelessness in California: Based on the 2023 point in time count, California has the largest homeless population in the nation with 181,399 people experiencing homelessness on any given night. Many of those people (113,660) are unsheltered, meaning they are living outdoors and not in temporary shelters. Nearly half of all unsheltered people in the country were in California during the 2023 count. The homelessness crisis is driven in part by the lack of affordable rental housing for lower income people. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units. Of the six

million renter households in the state, 1.7 million are paying more than 50% of their income toward rent. The National Low Income Housing Coalition estimates that the state needs an additional 1.5 million housing units affordable to very-low income Californians.

Recovery Housing: Under existing law, "recovery housing" or "sober living homes" are residential dwellings that provide cooperative living in a residential dwelling that support an individual's personal recovery from a substance use disorder. These homes are not licensed by DHCS or any other state or local government. This bill seeks to create a new category of "recovery home" for people who are homeless or at risk of experiencing homelessness or mental health or substance abuse issues. Recovery housing, as currently defined under existing law, is not required to comply with Housing First requirements, although some may do so. This bill would require a "recovery home" to comply with Housing First, which means that although the provider of the housing could emphasize abstinence, an individual would be offered options and would choose recovery housing over housing offering a harm-reduction approach; participation would be self-initiated; relapse is not a cause for eviction from housing and tenants receive relapse support; and policies and operations must ensure individual rights of privacy, dignity and respect, and freedom from coercion and restraint, as well as continuous, uninterrupted access to housing. By incorporating the principles of Housing First an evidence-based approach to housing, recovery homes will ensure greater success for individuals to remain housed.

Housing First: Decades of research demonstrate that evidence-based approaches like supportive housing – affordable housing coupled with wrap-around services – resolves homelessness for most individuals. In addition, the state has a policy of Housing First, which is an approach that prioritizes providing permanent housing to people experiencing homelessness, thus ending their homelessness and serving as a platform from which they can pursue personal goals and improve their quality of life. Many state and local programs effectively utilize these evidence-based approaches to address homelessness; however, the number of people falling into homelessness continues to overwhelm the response system and surpasses the affordable housing stock in many communities. These factors lead to persistently high rates of homelessness despite recent state and local investments. Other strategies, such as rental assistance and help with identifying and securing housing (housing navigation) can also help with those individuals who need prevention tools to avoid homelessness.

Shifting Funding: SB 1380 (Mitchell), Chapter 847, Statutes of 2016 required the state to adopt a Housing First approach and required all state-funded programs to comply with Housing First. Traditional recovery housing does not necessarily conform to Housing First because it is an abstinence-based approach to addressing substance abuse. This bill would set new guidelines for how recovery homes could continue to provide an option for abstinence but also comply with Housing First. This bill would allow state programs to use 25% of available funding for homelessness for licensed recovery homes, as defined.

Arguments in Support: According to the sponsors, SHARE!, **"**AB 2893 (Ward) would require the Department of Healthcare Services to oversee certification of recovery houses that serve individuals experiencing, or who are at risk of experiencing, homelessness or mental health issues, with a housing first model. The bill would require the department to establish criteria for certification of recovery houses in order to allow a recovery house to receive referrals from the department as available housing for persons experiencing, or at risk of experiencing, homelessness or mental health issues.

AB 2893 would establish recovery houses at the end of the continuum of care that does not provide any licensed medical services onsite. This definitional bill is crucial to ensure that during these difficult budgetary times, only the most effective programs that have a certified and proven track record should gain access to our strapped state funds."

Arguments in Opposition: None on file.

Committee Amendments: To further clarify the purpose of the bill, the committee may wish to consider amendments that do the following:

- Make clear that a recovery house is for an individual who is experiencing serious mental illness or substance use disorders.

- Allow a state program to fund recovery homes that use substance use-specific services, peer support, and physical design features supporting individuals and families on a path to recovery from addiction that emphasizes abstinence, so long as the state program requires 75% of funds in each county to be used for housing or housing-based services using a harm-reduction model.

Related Legislation:

AB 2479 (Haney) (2024) also adds requirements96 for recovery housing to Housing First. This bill is set for a hearing in Assembly Housing and Community Development Committee on April 24, 2024.

Double Referred: This bill was also referred to the Assembly Committee on Health, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

SHARE! (Sponsor)

Opposition

None on file.

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

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2898 (Wendy Carrillo) – As Amended April 8, 2024

SUBJECT: Unbundled parking: exemptions: Housing Choice Vouchers

SUMMARY: Exempts any residential unit that is leased to a tenant who receives a federal Housing Choice Voucher, including a federal Veterans Affairs Supportive Housing (VASH) Voucher, from the unbundled parking requirements of Civil Code Section 1947.1.

EXISTING LAW:

1) Requires an owner of a residential property that provides parking with the property to unbundle the cost of parking from the price of rent, if the property meets the following requirements set forth in Civil Code (CIV) Section 1947.1:

    a) The property is issued a certificate of occupancy on or after January 1, 2025.

    b) The property consists of 16 or more residential units.

    c) The property is located in one of the following counties:

        i) Alameda;

        ii) Fresno;

        iii) Los Angeles;

        iv) Riverside;

        v) Sacramento;

        vi) San Bernardino;

        vii) San Joaquin;

        viii) Santa Clara;

        ix) Shasta; or,

        x) Ventura

2) Prohibits an agreement to rent out a parking space in a property described in 1), above, from being included as a term of the housing rental agreement, and requires that it be provided as a rental housing agreement addendum or a separate rental agreement. (CIV 1974.1)

3) Establishes that a parking space that is unbundled from a property described in 1), above, is to remain unbundled for the life of the property. (CIV 1974.1)

4) Establishes that a tenant in a property described in 1), above, has a right of first refusal to parking spaces built for their property. (CIV 1974.1)

5) Establishes that a residential property that would otherwise be subject to 1), above, does not include the following types of properties (CIV 1974.1):

    a) A residential property or unit with an individual garage that is functionally a part of the property or unit, including, but not limited to, townhouses and row houses.

    b) A housing development of which 100 percent of its units, exclusive of any manager's unit or units, are deed-restricted affordable for persons and families of low or moderate income, as defined.

    c) A housing development that receives low-income housing tax credits, as specified.

    d) A housing development that is financed with tax-exempt bonds pursuant to a program administered by the California Housing Finance Agency.

FISCAL EFFECT: Unknown.

COMMENTS:

Author's statement: According to the author, "AB 2898 serves as a crucial clean-up to AB 1317, rectifying an oversight that would have placed an undue burden on tenants using federal Housing Choice Vouchers. By exempting voucher holders from the requirement to unbundle parking costs from rent, AB 2898 ensures that our efforts to increase housing affordability do not inadvertently harm our most vulnerable populations. Additionally, it's important to note that AB 1317 already includes exemptions for several types of affordable housing, reflecting our commitment to a nuanced approach that addresses the diverse needs of Californians."

Unbundled parking: Unbundled parking separates rental costs from parking costs, and allows residents to choose the number of parking spaces they wish to use and pay accordingly. For example, a tenant living in a building with "unbundled parking" would make one payment for their rental unit, and a separate payment for their vehicular parking space, if applicable. If residents of a housing development decide to forego car ownership, or reduce their personal vehicle ownership, they can save money by giving up their parking spaces and simply paying for their rental unit. Unbundled parking ensures that those who choose not to own a personal vehicle, or cannot afford one, are not being charged for a parking spot that they do not use.

By unbundling parking from housing, the market assigns the parking space its proper value. A tenant maintains a right of first refusal to the parking spot on their property, but if they choose not to exercise it, they do not have to pay for it (thereby reducing their total monthly payments) and the space is made available to the open market.

AB 1317 (Wendy Carrillo), Chapter 757, Statues of 2023, requires property owners of multifamily properties of 16 or more units to unbundle the cost of the parking space from the cost of the renting the housing unit in 10 counties, with the following exceptions:

1) A rental property or unit has an individual garage that is functionally a part of the property or unit, as is the case in townhouses and row houses;

2) The unit is part of a deed-restricted 100% affordable housing development;

3) The unit is part of a housing development that receives low-income housing tax credits; or,

4) The unit is part of a development that was financed with tax-exempt bonds pursuant to a program administered by the California Housing Finance Agency.

Concerns have been raised about the equity impacts of AB 1317 for low-income tenants utilizing federal Housing Choice Vouchers, including federal VASH Vouchers, in the rental housing market. Housing Choice Vouchers, sometimes referred to as Section 8 vouchers, are a form of federal rental assistance that help low-income tenants afford safe and decent housing in the private market. VASH vouchers combine HUD's Housing Choice Voucher rental assistance for unhoused Veterans with case management and clinical services provided by the Department of Veterans Affairs. Recipients of both conventional Housing Choice Vouchers and VASH Vouchers are free to choose any housing that meets the program's requirements, with the government Voucher covering a portion of the rent paid directly to the landlord. These Vouchers provide critical rental assistance to low-income tenants so that they can afford stable and adequate housing, without any supply-side investment.

When costs such as parking are unbundled from the rent, they become additional out-of-pocket expenses for Voucher holders. Since the housing assistance calculation is based solely on the rental cost, excluding unbundled services like parking directly affects the tenant's monthly budget. As currently written, AB 1317, applies to tenants holding Vouchers which means tenants would be unable to use those Vouchers to pay for the parking associated with their rental units in the jurisdictions and properties subjected to the requirements of AB 1317. AB 2898 would enable tenants using Housing Choice and VASH Vouchers to apply those Vouchers to the cost of their parking, while maintaining the original intent and policy goals of AB 1317.

Arguments in Support: According to Streets for All, "As the sponsors of 2023's AB 1317 (W. Carrillo), we look forward to see this tweak made to our important climate and equity policy that improves the policy objectives we had when we proposed the bill."

Arguments in Opposition: None on file.

Related Legislation:

AB 1317 (Wendy Carrillo), Chapter 757, Statutes of 2023. This bill required property of buildings of 16 units or more in 10 counties to separate the cost of parking from the rent, with certain exceptions.

Double referred: This bill was also referred to the Assembly Judiciary Committee, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Streets for All (Sponsor)
Livable California

Opposition

None on file.

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2910 (Santiago) – As Amended March 19, 2024

SUBJECT: State Housing Law: local regulations: conversion of commercial or industrial buildings

SUMMARY: Allows a city or county to adopt alternative building regulations for the conversion of commercial or industrial buildings and structures to residential uses, subject to approval by the California Building Standards Commission (CBSC). Specifically, **this bill**:

1) Allows a city or county to adopt alternative building regulations for the conversion of commercial or industrial buildings and structures, or portions thereof, to Residential Group R-1 or R-2 uses, as described in the California Building Standards Code.

2) Provides that the alternative building regulations adopted under this bill are not required to impose the same requirements as regulations adopted under specified laws governing alteration and repair of existing buildings; however, in permitting repairs, alterations, and additions necessary to accommodate the conversion to Residential Group R-1 or R-2 uses, the alternative building regulations must, in the determination of the local governing body, impose requirements that protect the public health, safety, and welfare.

3) Requires a city or county to meet both of the following requirements before it may adopt alternative building regulations under this bill:

    a) The city or county must have a housing element that is compliant with law, as determined by the Department of Housing and Community Development (HCD); and

    b) The city or county must be designated prohousing, as specified.

4) Requires a city or county to submit proposed alternative building regulations to the CBSC before it may adopt alternative building regulations under this bill.

5) Requires CBSC, in consultation with HCD, the Energy Commission, Public Utilities Commission, and State Fire Marshal (SFM), to review the proposed alternative building regulations within 30 days of receiving the proposed regulations.

6) Allows CBSC to request the city or county revise or amend the proposed regulations in order to protect public health, safety, and welfare.

7) Allows the city or county to proceed with adoption of the alternative building regulations if CBSC does not request revisions or amendments within 30 days of 5).

8) Provides that if CBSC requests revisions or amendments to the proposed alternative building regulations, the city or county must consider the requested revisions or amendments and to respond with at least one of the following within 30 days of receiving the request for revisions or amendments:

    a) Revised or amended proposed alternative building regulations; or

b) Written findings explaining why the city or county believes that the proposed alternative building regulations sufficiently protect the public health, safety, and welfare.

9) Requires CBSC, in consultation with HCD, the Energy Commission, Public Utilities Commission, and SFM, to approve or deny the proposed alternative building regulations by the city or county within 30 days of receiving the response in 8).

10) Requires CBSC, if it denies the proposed alternative building regulations, to provide written comments regarding the revisions or amendments to the proposed regulations needed to protect public health, safety, and welfare.

11) Requires the alternative building regulations to be adopted at a public meeting of the legislative body of the city or county, if the city or county adopts the regulations. Requires the city or county to submit the adopted alternative building regulations to CBSC.

12) Provides that it is the intent of the Legislature that local governments have discretion to define geographic areas that may be utilized for residential uses and to establish standards for occupancy, consistent with the needs and conditions peculiar to the local environment.

13) Provides that the Legislature recognizes that building code regulations applicable to residential housing may need to be relaxed or altered to provide residential uses in buildings previously used for commercial or industrial purposes.

14) Allows CBSC, HCD, the Energy Commission, Public Utilities Commission, SFM, and any member of the adaptive reuse working group established by AB 529 (Gabriel), Chapter 743, Statutes of 2023 to request additional information from the city or county regarding regulations adopted under this bill.

EXISTING LAW:

1) Defines “adaptive reuse” to mean the repurposing of building structures for residential purposes, such as former office use, commercial use, or business parks. When referring to building structures, adaptive reuse means retrofitting and repurposing of existing buildings that create new residential units, and expressly excludes a project that involves rehabilitation of any construction affecting existing residential units that are, or have been, recently occupied. (Health and Safety Code (HSC) 53559.1)

2) Establishes the CBSC within the Department of General Services (DGS), and requires the commission to approve and adopt building standards and to codify those standards in the California Building Standards Code. (HSC 18930)

3) Requires proposed building standards that are submitted to CBSC for consideration to be accompanied by an analysis completed by the appropriate state agency that justifies approval based on the following criteria:

   a) The building standard does not conflict with, overlap, or duplicate other building standards;

   b) The proposed standard is within the parameters of the agency's jurisdiction;

c) The public interest requires the adoption of the building standard;

d) The standard is not unreasonable, arbitrary, unfair, or capricious;

e) The cost to the public is reasonable, based on the overall benefit to be derived from the building standard;

f) The standard is not unnecessarily ambiguous or vague; and

g) The applicable national specifications, published standards, and model codes have been appropriately incorporated into the standard. (HSC 18930)

4) Requires CBSC to receive proposed building standards from a state agency for consideration in an 18-month code adoption cycle. Requires CBSC to adopt regulations governing the procedures for 18-month code adoption cycle, which must include adequate provision of the following:

a) Public participation in the development of standards;

b) Notice in written form to the public of the compiled building standards with justifications;

c) Technical review of the proposed building standards and accompanying justification by advisory boards appointed by CBSC; and,

d) Time for review of recommendations by the advisory boards prior to CBSC taking action. (HSC 18929.1)

5) Requires HCD to propose the adoption, amendment, or repeal of building standards to CBSC for residential buildings, including hotels, motels, lodging houses, apartment houses, dwellings, buildings, and structures. (HSC 17921)

6) Provides that only those building standards that are approved by the CBSC and are in effect at the local level at the time an application for a building permit is submitted shall apply to the plans and specifications for construction. (HSC 18938.5)

7) Requires HCD to convene a working group, no later than December 31, 2024, which must include but is not limited to the CBSC, Energy Commission, SFM, Public Utilities Commission, local government representatives, and stakeholders, to identify challenges to, and opportunities that help support, the creation and promotion of adaptive reuse residential projects statewide while not reducing minimum health and safety standards, including identifying and recommending amendments to state building standards. Requires each entity to provide input relative to its area of expertise and oversight. (HSC 17921.9(a))

8) Allows the working group in 7) to consider the following issues:

a) Energy and insulation upgrades;

b) Fire-rated assemblies;

c) Water and sewer piping;

d) Energy infrastructure, including individual utility meter upgrades;

e) Habitability; and

f) Any other local or state building requirement that may render the conversion or reuse of an existing building financially infeasible for residential uses. (HSC 17921.9(b))

9) Requires HCD to provide a report to the Legislature of its findings pursuant to 7) and 8) no later than December 31, 2025. (HSC 17921.9(c))

10) Requires HCD and other state agencies within the working group in 7), if the working group identifies and recommends amendments to building standards in its report, to research, develop, and consider proposing for adoption by CBSC adaptive reuse building standards within each agency's respective authority for the next triennial update of the California Building Standards Code that occurs on or after January 1, 2026, and, if available, the next intervening code adoption cycle that commences on or after January 1, 2025. (HSC 17921.9(d))

11) Allows a city or county to adopt alternative building regulations for the conversion of commercial or industrial buildings, or portions thereof, to "joint living and work quarters," defined to mean residential occupancy by a family maintaining a common household, or by not more than four unrelated persons, of one or more rooms or floors in a building originally designed for industrial or commercial occupancy which includes cooking space and sanitary facilities in conformance with local building standards, and adequate working space reserved for, and regularly used by, one or more persons residing therein. (HSC 17958.11(a))

12) Provides that the alternative building regulations in 13) need not impose the same requirements as specified regulations, but in permitting repairs, alterations, and additions necessary to accommodate joint living and work quarters, the alternative building regulations must impose such requirements as will, in the determination of the local governing body, protect the public health, safety, and welfare. (HSC 17958.11(a))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Shifts in current and projected office demand have led declining commercial office building valuations, which threaten local governments' budgets that rely heavily on property taxes on commercial real estate to provide public goods and services. Adaptive reuse of underutilized commercial buildings has the potential to provide quality, infill residential units, offering a potential solution to meeting both housing supply and environmental sustainability goals. AB 2910 would give local governments the flexibility and nuance needed to amend their local building codes to better enable conversion projects, while ensuring the State has the appropriate level of oversight and discretion in the process to protect public health, safety, and welfare."

Background on Building Standards: The California Building Standards Law establishes the process for adopting state building standards by CBSC. Statewide building standards are intended to provide uniformity in building across the state. CBSC's duties include the following:

receiving proposed building standards from state agencies for consideration in each triennial and intervening building code adoption cycle; reviewing and approving building standards submitted by state agencies; adopting building standards for state buildings where no other state agency is authorized by law; and publishing the approved building standards in the California Building Standards Code (California Code of Regulations, Title 24). Local governments may adopt "reach codes" that incorporate additional requirements, but may not reduce requirements below the thresholds in the state standards.

There are approximately 20 state agencies that develop building standards and propose them for adoption to CBSC. HCD is responsible for the standards for residential buildings, hotels and motels. The California Existing Building Code governs the structural capacity, life-safety system, and environmental performance requirements for adaptive reuse projects. Updates and changes to building standards are adopted on two timelines: through the triennial code adoption cycle which occurs every three years and through the intervening code adoption cycle which provides an update to codes 18 months after the publication of the triennial codes. Regulatory activities for each cycle begin over two years before the effective date of the codes. The standards adopted in the next intervening code cycle will be effective on July 1, 2024 and the next triennial cycle's standards will be effective on January 1, 2026.

Adaptive Reuse: Adaptive reuse refers to the repurposing of existing building structures for new uses. This can include small projects, like converting an old church into a storefront or restaurant, or large projects, such as converting former offices, malls, or business parks into mixed-use spaces or multifamily housing. In communities with historic architecture, adaptive reuse can serve as a form of historic preservation by maintaining exterior facades of buildings while allowing the conversion of interiors for modernized or different uses. Adaptive reuse for residential projects can also promote greenhouse gas reduction by facilitating infill development near existing jobs, transit, and retail and reducing the need for vehicle trips. In some instances, rehabilitating an existing building can bring new housing online quicker than a traditional new construction project. Adaptive reuse also eliminates the need to demolish the existing building, which can be an expensive component of the overall development costs of a project.

However, a UC Berkeley Terner Center for Housing Innovation report from November 2021, "Adaptive Reuse Challenges and Opportunities in California," finds that adaptive reuse of existing commercial buildings to multifamily housing "tends to be more expensive than new construction, particularly when unexpected expenses (e.g., seismic retrofitting or environmental remediation) are taken into account. The structure of the existing building also determines the feasibility and cost of conversion, meaning that not every commercial property will be a good candidate for redevelopment. Buildings with specific architectural characteristics, such as shallow floor plates, generous exterior exposure, or unique building features, are especially conducive to adaptive reuse."[1]

The report goes on to note that there are significant differences in building standard requirements for residential and commercial uses, which challenge the viability of these types of development in unique ways. These differences are most complex as they relate to requirements for natural light and ventilation, seismic safety, fire safety, and environmental quality or hazardous material remediation. The report recommends local jurisdictions adopt ordinances that clarify building code requirements for these projects, and notes that "the state could support more adaptive reuse

[1] Adaptive Reuse Challenges and Opportunities in California - Terner Center (berkeley.edu)

projects by providing technical guidance or training in inspections, as well as by making revisions to the [California Existing Building Code] and/or to the California Residential Code."

In response to this report and recent interest in adaptive reuse as a method to revitalize urban areas with vacant office space, the Legislature passed and the Governor signed AB 529 (Gabriel). That bill established a working group of various relevant code agencies helmed by HCD to review the building codes and identify challenges to, and opportunities that help support, the creation and promotion of adaptive reuse residential projects in a manner that does not reduce health and safety standards. The working group is charged with formulating recommendations for possible amendments to the state building standards and if such recommendations are made, the bill requires the respective entities to research, develop, and consider proposing such standards for adoption either in the next intervening code cycle beginning on or after January 1, 2025, or the next triennial cycle beginning on or after January 1, 2026.

This bill, by contrast, would allow any prohousing local government the option of proposing its own alternative building regulations, along the model that the Legislature previously authorized for artist live/work quarters in the 1970s. The alternative building regulations would have to be submitted to five state agencies for review, including HCD and the CBSC, and the CBSC would have the ability to approve, request modifications to, or deny the alternative standards. The committee may wish to consider whether it is appropriate to grant this permission to cities that do not necessarily have a surplus of underutilized commercial space or have not expressed a local priority to adaptively reuse such buildings for housing. The committee may further wish to consider whether any local alternative regulations should continue to remain in effect after any state building standards might be updated pursuant to the AB 529 process.

Arguments in Support: According to the Central City Association of Los Angeles, the bill's sponsor, "The COVID-19 pandemic spurred a significant shift in the way people work, reducing the amount of time spent working in offices and increasing the amount of work done on hybrid or remote schedules. Property values of office buildings have declined in parallel with diminished demand for office space, which has significant implications for tax revenues that cities, counties and the state depend on to fund critical public services. Adaptive reuse of underutilized commercial properties has the potential to breathe new life into downtowns across California reversing declining tax revenues while addressing the state's housing crisis and furthering our ambitious sustainability goals, among other important public objectives."

Arguments in Opposition: None on file.

Committee Amendments: Staff recommends the bill be amended as follows:

- Limit the bill to only allow cities (not counties) with a population greater than 400,000 people and that have an adaptive reuse ordinance to propose alternative building regulations under the bill's provisions.

- Increase the timeline CBSC and the four other state entities have to review the proposed alternative regulations from 30 days to 90 days, and clarify the process for how the CBSC will approve, deny, or request changes to the proposed regulations.

- Strike HSC 17958.10 (d) and revise (e) to make reference to the AB 529 working group and the time gap before those working group's recommendations are proposed to the state building standards.

- Sunset the bill and any alternative building standards adopted under the bill's provisions as of the adoption of any state adaptive reuse building standards, as specified in AB 529, or January 1, 2029, whichever is earlier.

17958.10. (a) A city ~~or a county~~ may adopt alternative building regulations for the conversion of commercial ~~or industrial~~ buildings and structures, or portions thereof, to Residential Group R-1 or R-2 uses, as described in the California Building Standards Code.

(1) The buildings and structures subject to the alternative building regulations adopted pursuant to this section shall remain subject to local zoning regulations.

(2) The alternative building regulations adopted pursuant to this section are not required to impose the same requirements as regulations adopted pursuant to Section 17922. However, in permitting repairs, alterations, and additions necessary to accommodate the conversion to Residential Group R-1 or R-2 uses, the alternative building regulations shall, in the determination of the local governing body, impose requirements that protect the public health, safety, and welfare.

(b) Before a city ~~or county~~ may adopt alternative building regulations pursuant to this section, the city ~~or county~~ shall meet ~~both~~ ***all*** of the following requirements:

(1) The city ~~or county~~ shall have a housing element that is compliant with law, including, but not limited to, Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, as determined by the Department of Housing and Community Development.

(2) The city ~~or county~~ shall ***adopt or have adopted an ordinance to facilitate or expedite review of adaptive reuse projects, as described in subparagraph (K) of paragraph (3) of paragraph (f) of section 65589.9 of the Government Code*** ~~be designated prohousing pursuant to subdivision (c) of Section 65589.9 of the Government Code~~.

(3) The city shall have a population on January 1, 2025 of greater than 400,000 people.

(c) (1) Before a city ~~or county~~ may adopt alternative building regulations pursuant to this section, the city ~~or county~~ shall submit proposed alternative building regulations to the California Building Standards Commission.

(2) The California Building Standards Commission, in consultation with the Department of Housing and Community Development, Energy Commission, Public Utilities Commission, and State Fire Marshal, shall review the proposed alternative building regulations within ***90 days*** ~~30 days~~ of receiving the proposed regulations***, and shall approve or deny the proposed regulations, or may***~~. The California Building Standards Commission~~ request the city ~~or county~~ to revise or amend the proposed regulations in order to protect public health, safety, and welfare. ~~If the California Building Standards Commission does not request revisions or amendments within 30 days, then the city or county may proceed with the adoption of alternative building regulations~~.

(3) If the California Building Standards Commission requests revisions or amendments to the proposed alternative building regulations, the city ~~or county~~ shall consider the requested revisions or amendments and to respond with at least one of the following within 30 days of receiving the request for revisions or amendments:

(A) Revised or amended proposed alternative building regulations.

(B) Written findings explaining why the city ~~or county~~ believes that the proposed alternative building regulations sufficiently protect the public health, safety, and welfare.

~~(4) The California Building Standards Commission, in consultation with the Department of Housing and Community Development, Energy Commission, Public Utilities Commission, and State Fire Marshal, shall approve or deny the proposed alternative building regulations by the city or county within 30 days of receiving the response from the city or county.~~

(5) If the California Building Standards Commission denies the proposed alternative building regulations, the California Building Standards Commission shall provide written comments regarding the revisions or amendments to the proposed regulations needed to protect public health, safety, and welfare.

(6) If the city ~~or county~~ adopts the ***approved*** alternative building regulations, the regulations shall be adopted at a public meeting of the legislative body of the city ~~or county~~. The city ~~or county~~ shall submit the adopted alternative building regulations to the California Building Standards Commission.

~~(d) It is the intent of the Legislature that local governments have discretion to define geographic areas that may be utilized for residential uses and to establish standards for occupancy, consistent with the needs and conditions peculiar to the local environment.~~

(e) The Legislature recognizes that ~~building code regulations applicable to residential housing may need to be relaxed or altered to provide residential uses in buildings previously used for commercial or industrial purposes~~***, while the working group established pursuant to Section 17921.9 is identifying and recommending amendments to state building standards to facilitate the creation and promotion of adaptive reuse residential projects statewide while not reducing minimum health and safety standards, there is a period of time before such amendments may be proposed during which adaptive reuse projects are subject to existing building standards which may warrant revisions or modifications***.

(f) The California Building Standards Commission, Department of Housing and Community Development, Energy Commission, Public Utilities Commission, State Fire Marshal, and any member of the working group established pursuant to Section 17921.9 may request additional information from the city ~~or county~~ regarding regulations adopted pursuant to this section.

(g) This section and any alternative building standards adopted pursuant to this section shall remain in effect only until the adoption of any state adaptive reuse building standards, as specified in paragraph (d) of Section 17921.9, or January 1, 2029, whichever is earlier, and as of that date shall be repealed.

Related Legislation:

AB 529 (Gabriel), Chapter 743, Statutes of 2023: Required HCD to convene a working group regarding adaptive reuse residential projects, including identifying and recommending amendments to state building standards, and made other changes to state law related to adaptive reuse projects.

AB 1695 (Santiago), Chapter 639, Statutes of 2022: Required HCD's affordable multifamily housing loan programs to allow adaptive reuse as an eligible activity for a notice of funding availability application.

AB 2592 (McCarty), Chapter 439, Statutes of 2022: Requires the Department of General Services to prepare a plan to transition underutilized multistory state buildings into housing for purposes of expanding affordable housing development and adaptive reuse opportunities of multistory state office buildings and for adaptive reuse incentive grants, and requires them to submit that plan as a report to the Legislature by January 1, 2024.

SB 1369 (Wieckowski) of the 2021-22 Session would have made an adaptive reuse project a use by right in all areas regardless of zoning, made changes to the Infill Infrastructure Grant program, and required the issuance of building standards that revise and clarify existing building codes applicable to adaptive reuse projects commencing with the next triennial edition of the California Building Standards Code adopted after January 1, 2023. This bill died pending a hearing in the Senate Committee on Governance and Finance.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Central City Association (Sponsor)
AARP
Abundant Housing LA
AXIS/GFA
BOMA California
California Business Properties Association
California Downtown Association
Council of Infill Builders
Housing Action Coalition
League of California Cities
Miyamoto International, INC.
NAIOP California
Philip Yu, Ms, Se
Southern California Rental Housing Association
The Institute of Real Estate Management

Opposition

None on file.

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2933 (Low) – As Amended March 21, 2024

SUBJECT: Multiunit residential structures and mixed-use residential and commercial structures: water conservation

SUMMARY: Requires the California Building Standards Commission (CBSC) to research, develop, and propose building standards to reduce water waste in existing and new multiunit residential structures and mixed-use residential and commercial structures, including requiring installation of point-of-use systems, as defined. Specifically, **this bill**:

1) Defines "point-of-use system" to mean a smart technology that uses remote data gathering and real-time analytics to detect water waste and to identify the point of failure. Its purpose is to quickly and precisely locate faulty fixture and plumbing leaks and alert the landlord so repairs can be made quickly.

2) Defines "multiunit residential structure" and "mixed-use residential and commercial structure" to mean real property containing two or more dwelling units.

3) Requires CBSC, commencing with the next triennial edition of the California Building Standards Code, to research, develop, and propose building standards, including voluntary Tier 1 or Tier 2 standards of the California Green Building Standards Code, to reduce water waste in existing and new multiunit residential structures and mixed-use residential and commercial structures, including requiring installation of point-of-use systems combined with real-time communication technology that can alert property managers to malfunctioning toilets and plumbing leaks and provide pinpoint location data so that maintenance teams can respond rapidly to resolve water waste events in existing and new structures.

4) Requires CBSC to perform a review of water efficiency standards in the California Building Standards Code every three years after developing and proposing the standards in 3), and update the standards as needed.

5) Allows CBSC, in developing and proposing building standards under this bill, to expend funds from the Building Standards Administration Special Revolving Fund, upon appropriation.

EXISTING LAW:

1) Establishes the CBSC within the Department of General Services, and requires the commission to approve and adopt building standards and to codify those standards in the California Building Standards Code. Requires CBSC to publish editions of the code in its entirety once every three years. In the intervening period the commission must publish supplements as necessary. (Health and Safety Code (HSC) Sections 18942 and 18930)

2) Requires CBSC to receive proposed building standards from a state agency for consideration in an 18-month code adoption cycle. Requires CBSC to adopt regulations

governing the procedures for 18-month code adoption cycle, which must include adequate provision of the following:

a) Public participation in the development of standards;

b) Notice in written form to the public of the compiled building standards with justifications;

c) Technical review of the proposed building standards and accompanying justification by advisory boards appointed by CBSC; and

d) Time for review of recommendations by the advisory boards prior to CBSC taking action. (HSC 18929.1)

3) Requires proposed building standards that are submitted to CBSC for consideration to be accompanied by an analysis completed by the appropriate state agency that justifies approval based on the following criteria:

a) The building standard does not conflict with, overlap, or duplicate other building standards;

b) The proposed standard is within the parameters of the agency's jurisdiction;

c) The public interest requires the adoption of the building standard;

d) The standard is not unreasonable, arbitrary, unfair, or capricious;

e) The cost to the public is reasonable, based on the overall benefit to be derived from the building standard;

f) The standard is not unnecessarily ambiguous or vague; and

g) The applicable national specifications, published standards, and model codes have been appropriately incorporated into the standard. (HSC 18930)

4) Requires HCD to propose the adoption, amendment, or repeal of building standards to CBSC for residential buildings, including hotels, motels, lodging houses, apartment houses, dwellings, buildings, and structures. (HSC 17921)

5) Provides that only those building standards that are approved by the CBSC and are in effect at the local level at the time an application for a building permit is submitted shall apply to the plans and specifications for construction. (HSC 18938.5)

6) Establishes the Building Standards Administration Special Revolving Fund, and makes the moneys in the fund available, upon appropriation, to state entities to carry out various related provisions, as specified. (HSC 18931.7)

7) Requires HCD, commencing with the next triennial edition of the California Building Standards Code, to research, develop, and propose building standards, including voluntary Tier 1 or Tier 2 standards of the California Green Building Standards Code, to reduce potable water use in new residential buildings, including consideration of requiring

installation of water reuse systems and consideration of requiring preplumbing of buildings to allow future use of recycled water, onsite treated graywater, or other alternative water sources. (HSC 17921.11(b))

8) Requires HCD, in developing the standards under 7), to consider potential impacts on affordable housing, authorizes them to limit requirements to hotel and motel, multifamily, and market-rate housing, and authorizes them to limit or exempt the application of standards based on building size, development size, availability or planned availability of recycled water, or as otherwise determined appropriate. (HSC 17921.11(b))

9) Requires CBSC to perform a review of water efficiency and water reuse standards in the California Building Standards Code every three years after the next triennial edition of the code, and update as needed. (HSC 18940.7(c))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "As climate change progresses, droughts are expected to become more frequent. Therefore, strengthening water conservation efforts is critical. AB 2933 aims to reduce water wastage caused by leaky toilets by requiring the installation of devices with real-time communication technology to alert and pinpoint location data so property owners can respond rapidly. AB 2933 is crucial to ensuring a more sustainable and less wasteful California."

Background on Building Standards: The California Building Standards Law establishes the process for adopting state building standards by the Commission. Statewide building standards are intended to provide uniformity in building across the state. The CBSC's duties include the following: receiving proposed building standards from state agencies for consideration in each triennial and intervening building code adoption cycle; reviewing and approving building standards submitted by state agencies; adopting building standards for state buildings where no other state agency is authorized by law; and publishing the approved building standards in the California Building Standards Code (CCR, Title 24).

There are approximately 20 state agencies that develop building standards and propose them for adoption to the CBSC. After the proposal of building standards by state agencies, the standards undergo a public vetting process. A code advisory committee composed of experts in a particular scope of code reviews the proposed standards, followed by public review. The proposing agency considers feedback and may then amend the standards and re-submit them to the CBSC for consideration. HCD is responsible for the standards for residential buildings, hotels and motels. The California Building Code and California Residential Code govern general standards for multifamily and single-family residential construction, while the California Plumbing Code governs plumbing requirements for a variety of buildings. Within the codes, there are certain requirements that are mandatory for all newly constructed dwellings or buildings, and certain provisions that are optional or voluntary – meaning the requirements must be followed only if an entity chooses to construct certain items or systems.

Updates and changes to building standards are adopted on two timelines: through the triennial code adoption cycle which occurs every three years, and through the intervening code adoption cycle which provides an update to codes 18 months after the publication of the triennial codes.

Regulatory activities for each cycle begin over two years before the effective date of the codes. The standards adopted in the current intervening code cycle will be effective on July 1, 2024 and the next triennial cycle's standards will be effective on January 1, 2026.

As a matter of practice, the Legislature typically offers guidelines or directs agencies to consider certain standards, rather than requires the adoption of specific standards, in order to provide flexibility and allow for subject matter experts to determine appropriateness and weigh the many considerations that must be evaluated when recommending new or modified building standards. This bill would circumvent that practice by mandating adoption of specific building standards that would be required to be imposed on existing and new multifamily residential buildings. The committee may wish to consider modifying the bill to conform to the practice of requesting code adoption entities – in this case HCD – to consider whether point-of-use leak detection systems should be incorporated into future building standards or not.

Arguments in Support: According to a coalition of supporters, including Sensor Industries, Alarm.com, Alert Labs, and Wint, "By combining systems that monitor water use and detect leaks, property managers can be alerted in real-time to malfunctioning plumbing systems and abnormal water use, with pinpoint location data enabling rapid response by maintenance teams. These solutions are proven, cost-effective, and offer property owners and managers a positive return on investment by reducing water costs, leak remediation expenses, and insurance premiums. In many cases, the system pays for itself within 24 months of installation. On a larger scale, adopting these measures would result in significant water savings, alleviate stress on existing water delivery systems, and reduce energy costs associated with water transport."

Arguments in Opposition: The California Association of Realtors "respectfully requests a NO vote on AB 2933."

Committee Amendments: The building standards code adoption cycle is a formal regulatory process that involves extensive stakeholder input and public feedback. In order to provide flexibility and allow for subject matter experts to determine appropriateness and weigh the many considerations that must be evaluated when recommending new or modified building standards, staff recommends this bill be amended as follows:

- Strike the finding in (k) presuming updates to the California Building Standards Code;
- Align the definition of multifamily structure in the bill with existing building standards by increasing the number of dwelling units from two to three;
- Change references throughout the bill from CBSC to HCD, as HCD has regulatory authority over residential standards;
- Strike the requirement for CBSC to propose building standards to require installation of point-of-use systems, and instead require HCD to investigate whether additional water conservation and efficiency measures are warranted for existing and new multifamily buildings, and authorize HCD to propose to CBSC any such proposals they feel are warranted for consideration in the next code adoption cycle; and
- Strike the requirement for CBSC to perform a review of water efficiency standards in the building code every three years, as this is duplicative of existing law.

HSC 17921.12. (a) For purposes of this section, the following definitions apply:

(1) "Point-of-use system" means a smart technology that uses remote data gathering and real-time analytics to detect water waste and to identify the point of failure. Its purpose is to quickly and precisely locate faulty fixture and plumbing leaks and alert the landlord so that repairs can be made quickly.

(2) "Multiunit residential structure" and "mixed-use residential and commercial structure" mean real property containing ~~two~~ ***three*** or more dwelling units.

(b) The ~~California Building Standards Commission~~ ***Department of Housing and Community Development*** shall, commencing with the next triennial edition of the California Building Standards Code (Title 24 of the California Code of Regulations), ***investigate whether additional water conservation and efficiency measures are warranted for existing and new multifamily residential construction and mixed-use residential and commercial structures, including, but not limited to, "point of use" leak detection technology.***

If the department determines that changes to the California Green Building Standards Code (Part 11 of Title 24 of the California Code of Regulations) are warranted, the Department may develop appropriate voluntary or mandatory proposals to be submitted to the California Building Standards Commission for consideration ~~research, develop, and propose building standards, including voluntary Tier 1 or Tier 2 standards of the California Green Building Standards Code (Part 11 of Title 24 of the California Code of Regulations), to reduce water waste in existing and new multiunit residential structures and mixed-use residential and commercial structures, including requiring installation of point-of-use systems combined with real-time communication technology that can alert property managers to malfunctioning toilets and plumbing leaks and provide pinpoint location data so that maintenance teams can respond rapidly to resolve water waste events in existing and new structures.~~

~~(c) The commission shall perform a review of water efficiency standards in the California Building Standards Code every three years after developing and proposing the standards described in subdivision (b) and update the standards as needed.~~

(d) In developing and proposing building standards pursuant to this section, the ~~commission~~ ***department*** may, upon appropriation pursuant to Section 18931.7, expend funds from the Building Standards Administration Special Revolving Fund.

Related Legislation:

SB 597 (Glazer) of the current legislative session requires HCD to conduct research and develop recommendations, and authorizes them to propose, building standards for the installation of rainwater catchment systems in newly constructed residential dwellings. The bill requires HCD to provide a report to the Legislature regarding the outcomes of its research and the recommendations developed by January 1, 2025. This bill passed out of this committee on a 6-0 vote and is currently pending before the Assembly Appropriations Committee.

SB 745 (Cortese), Chapter 884, Statutes of 2023: Requires HCD and the CBSC to research, develop, and propose building standards to reduce potable water use in new residential and

nonresidential buildings, and requires CBSC to perform a review of water efficiency and water reuse standards every three years, and update them as needed.

***Double Referred**:* This bill was also referred to the Assembly Committee on Environmental Safety and Toxic Materials, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Alarm.com
Alert Labs
Sensor Industries
Wint

Opposition

California Association of Realtors

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2967 (Ting) – As Amended March 21, 2024

SUBJECT: Teacher Housing Act of 2016: definitions

SUMMARY: Revises the definition of "teachers and school districts" in the Teacher Housing Act of 2016, to include a person employed by a nonprofit organization operating early childhood, prekindergarten, or school-aged childcare classrooms and programs on school district property with funding from the State Department of Education, the federal Head Start program, or other public funding targeted to children from families of low and moderate income.

EXISTING LAW:

Federal law:

1) Provides that a low-income housing tax credit (LIHTC) project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants:

    a) with special needs;

    b) who are members of a specified group under a Federal program or state program or policy that supports housing for such a specified group; or

    c) who are involved in artistic or literary activities. (Internal Revenue Code Section 42(g)(9))

State law:

1) Establishes the Teacher Housing Act of 2016 to facilitate the acquisition, construction, rehabilitation, and preservation of affordable rental housing for teachers and school district employees and to allow teachers or school district employees to access and maintain housing stability. (Health and Safety Code (HSC) Section 53571)

2) Provides that a program developed under the Teacher Housing Act of 2016 must be limited to teachers and school district employees. (HSC 53571)

3) Defines "affordable rental housing" to mean housing of five or more units in which a majority of the rents are restricted to level that affordable to person and families of low or moderate income. (HSC 53571)

4) Defines "teacher or school district employee" to mean a person employed by a unified school district, an elementary school district, or a high school, including, but not limited to, certificated or classified staff. (HSC 53571)

5) Allows a school district to establish and implement a program that addresses the housing needs of teachers and school district employees who face challenges securing affordable housing, by:

    a) Leveraging federal, state, local public, private, nonprofit programs and fiscal resources available to housing developers;

    b) Promoting public and private partnerships; and

    c) Fostering innovative financing options. (HSC 53571)

6) Creates a state policy supporting housing for teachers and school district employees as described in Section 42 (g)(9) of the Internal Revenue Code and permits school districts and developers in receipt of local or state funds or tax credits for affordable housing to restrict occupancy to teachers and school district employees on land owned by school districts, provided that no other laws are violated. (HSC 53571)

7) Establishes the Community College Faculty and Employee Housing Act of 2022 to allow a community college district to establish and implement programs that address the housing needs of community college district employees and faculty who face challenges in securing affordable housing. (HSC 53580)

8) Creates a state policy supporting housing for community college employees and faculty as described in Section 42(g)(9) of the Internal Revenue Code to allow the following:

    a) A community college district and a developer in receipt of local or state funds or tax credits designated for affordable rental housing to restrict occupancy to community college district employees or faculty on land owned by the community college district; and

    b) A developer in receipt of tax credits designated for affordable rental housing to retain the right to prioritize and restrict occupancy on land owned by community college district to employees and faculty, so long as that housing does not violate any other applicable laws. (HSC 53584)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "California is in the middle of a dire housing crisis. Teachers have especially struggled to afford housing. One third of teachers are rent-burdened and only 17% of homes in California are affordable for the average teacher. In an effort to address this problem for teachers, California adopted the Teacher Housing Act in 2016 to facilitate the creation of housing that is specially set aside for teachers and public school employees. Unfortunately, current law prohibits teachers and employees at publicly funded early childhood, pre-kindergarten, transitional kindergarten, and afterschool programs from participating in teacher housing programs because they are not technically employees of the school district. AB 2967 expands the Teacher Housing Act to include these important educators if they teach on school district property with funding from the Department of Education, the

Head Start program, or other public funding sources targeted to children of low and moderate-income families."

***LIHTC**:* Most affordable housing created in the state is funded in part by federal and state LIHTC. LIHTC are used to develop housing for households that make up to 80% of the area median income (AMI). California receives an allocation of federal tax credits each year based on a per-resident formula. In 1987, the Legislature authorized the creation of a state LIHTC program to augment the federal tax credit program. The state tax credit program has an ongoing statutory authorization of $70 million. The 2019-20, 2020-21, and 2021-23 budgets authorized an additional $500 million for state tax credits.

***Teacher Housing Act of 2016*:** In 2016, SB 1413 (Leno), Chapter 732, established the Teacher Housing Act of 2016 (the Act) to facilitate the acquisition, construction, rehabilitation, and preservation of affordable housing for teachers and school district employees. The Act authorized school districts to establish and implement programs that address the housing needs of teachers and school district employees by leveraging funding sources, including state, federal, and local public, private and nonprofit resources available to housing developers, promoting public and private partnerships, and fostering innovative financing opportunities. The Act also created a state policy supporting the use of federal and state LIHTC to fund housing for teachers and school district employees on land owned by the school district and permitted school districts to restrict occupancy to teachers and school district employees.

Generally, under federal IRS rules, if a residential unit is provided for only a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for federal LIHTC. However, federal IRS law also states that a qualified LIHTC project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (1) with special needs, (2) who are members of a specified group under a federal program or a state program or policy that supports housing for such a specified group, or (3) who are involved in artistic or literary activities.

The Act provided express state statutory authority to permit school districts to construct housing on their property and limit the occupancy to teachers and school districts employees. As mentioned above, federal law creates an exemption to the "general use" requirement that allows the use of federal and state tax credits if a state establishes a policy or program that supports housing for such a specified group. The Act established this policy by allowing school districts to restrict occupancy of affordable housing on school district land constructed with federal or state LIHTC to the district's teachers and school employees.

In 2021, AB 3308 (Gabriel), Chapter 199, further amended the Act to make clear that school districts could still access LIHTC if the school district restricts occupancy of housing constructed on their land to their own employees, but at their discretion offers the housing to other public employees.

In 2022, AB 1719 (Ward), Chapter 640, established the Community College Faculty and Employee Housing Act of 2022, creating a state policy to allow developers that receive LIHTC to restrict occupancy to faculty and community college district employees on land owned by community college districts.

This bill would add to the definition of "teachers and school districts" in the Teacher Housing Act of 2016, to include a person employed by a nonprofit organization operating early childhood,

pre-kindergarten, or school-aged childcare classrooms and programs on school district property with funding from the State Department of Education, the federal Head Start program, or other public funding targeted to children from families of low and moderate income. This will allow LIHTC to fund developments that prioritize and restrict occupancy of housing located on school district property to employees of childcare programs in addition to teachers, employees of the school district, and other public employees.

Arguments in Support: According to the sponsors, the County of San Mateo, "To provide more housing options for the County's early childhood workforce, the Housing Authority of San Mateo County (HACSM) is working with MidPen Housing to redevelop Midway Village, an older public housing site, in four phases of affordable housing development. The local school district donated land to create affordable housing under an agreement with HACSM and MidPen to develop a new early childhood center for Peninsula Family Services, a provider of state-funded early childhood education programs at Midway Village. More importantly, the land donation was also in consideration of an agreement to include a housing preference for some of the units for educators, including a secondary preference for early childhood educators, who, like the employees of Peninsula Family Services, are not employees of the school district but provide early childhood services vital to the school readiness of the school district's children. Unfortunately, critical early childhood educators employed by a nonprofit organization providing state or federally early childhood education and after-school programs for qualifying low-income children are not eligible for the teacher housing preference under the Teacher Housing Act of 2016. AB 2967 would make these essential educators eligible to live in teacher housing projects by expanding the Teacher Housing Act of 2016 to include employees of nonprofits who operate early childhood, pre-kindergarten, or school-aged childcare on school district property with funding from the Department of Education, the Head Start program, or other public funding sources targeted to children of low and moderate-income families."

Arguments in Opposition: None on file.

Related Legislation:

AB 2005 (Ward) (2023) would create a state policy to all housing for California State University (CSU) employees and faculty to qualify for LIHTC. This bill passed out 7-0 in the Assembly Housing and Community Development Committee. This bill is currently pending hearing in the Assembly Appropriations Committee.

AB 1719 (Ward), Chapter 640, Statutes of 2022: Established the Community College Faculty and Employee Housing Act of 2022 to allow community colleges and developers in receive of LIHTC to limit occupancy of affordable housing constructed using LIHTC to faculty and employees of community colleges.

AB 3308 (Gabriel), Chapter 199, Statutes of 2021: Clarified the Teacher Housing Act of 2016 to make clear that school districts could restrict occupancy of housing constructed on their land to their own employees but at their discretion can open up the housing to other public employees.

SB 1413 (Leno), Chapter 732, Statutes of 2016: Established the Teacher Housing Act of 2016 and to allow a school district to establish and implement programs that address the housing needs of teachers and school district employees who face challenges in securing affordable housing. In addition, to allow housing developments to use LIHTC to build housing restricted to teachers and employees of school districts.

Double Referred: This bill was also referred to the Assembly Committee on Education, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

County of San Mateo (Sponsor)
Peninsula Family Service

Opposition

None on file.

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

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 3068 (Haney) – As Introduced February 16, 2024

SUBJECT: Adaptive reuse: streamlining: incentives

SUMMARY: Establishes the Office to Housing Conversion Act, creating streamlined, ministerial approvals process for adaptive reuse projects, as defined, and provides certain financial incentives for the adaptive reuse of existing buildings. Specifically, **this bill**:

1) Defines the following terms related to the adaptive reuse investment incentive program:

    a) "Adaptive reuse investment incentive funds" means an amount up to or equal to the amount of ad valorem property tax revenue allocated to a participating local agency, excluding certain revenue transfers, from the taxation of an adaptive reuse project property that is in excess of the qualified adaptive reuse project property's valuation at the time of the proponent's initial request for funding;

    b) "Program" refers to a city or county-run incentive funding program for adaptive reuse, as established in this bill;

    c) "Proponent" is defined as the applicant for construction permits of adaptive reuse projects who will own or lease the property upon completion;

        i. Proponents receiving capital investment incentives through an adaptive reuse investment incentive fund may provide for the payment to the lessee of any portion of adaptive reuse investment incentive funds received; and

2) Authorizes local governments to establish an adaptive reuse investment incentive program, as specified:

    a) Beginning in fiscal year 2024-25, the governing body of a city or county may establish an adaptive reuse investment incentive fund by ordinance or resolution.

    b) Cities or special districts can contribute an amount equal to their allocated property tax revenue from the increased value of the adaptive reuse project, but not the actual property tax allocation, through the adaptive reuse investment incentive program.

    c) Proponents of qualified adaptive projects can receive incentive funds, upon written request by the proponent and approval by the local government, for up to 15 years, starting the fiscal year after the project is issued a certificate of occupancy.

3) Establishes the Office to Housing Conversion Act, which defines the following terms:

    a) "Adaptive reuse" means the retrofitting and repurposing of an existing building to create new residential or mixed uses including office conversion projects, provided that "adaptive reuse" shall not include the retrofitting and repurposing of any light industrial use, unless the planning director or equivalent position of a local government determines that the specific light industrial use is no longer useful for industrial purposes.

b) "Adjacent portion of the project" means the portion of the project located on a site adjacent to the proposed repurposed existing building.

c) "Broadly applicable housing affordability requirement" means a local ordinance or other regulation that requires a minimum percentage of affordable units and that applies to a variety of housing development types or entitlement pathways.

d) "Impact fee" means any fee imposed pursuant to the Mitigation Fee Act.

e) "Historical resource" means the same as defined in subdivision (j) of Section 5020.1 of the Public Resources Code, or a resource listed in the California Register of Historical Resources as described in Section 5024.1 of the Public Resources Code.

f) "Light industrial use" means a use that is not subject to permitting by a district, as defined in Section 39025 of the Health and Safety Code.

g) "Local government" means a city, including a charter city, a county, or a city and county.

h) "Mixed use" means residential uses combined with at least one other land use, but not including any industrial use.

i) "Office conversion project" means the conversion of a building used for office purposes or a vacant office building into residential dwelling units.

j) "Persons and families of low or moderate income" means the same as defined in Section 50093 of the Health and Safety Code.

k) "Phase I environmental assessment" means the same as defined in Section 78090 of the Health and Safety Code.

l) "Phase II environmental assessment" means the same as defined in Section 25403 of the Health and Safety Code.

m) "Preliminary endangerment assessment" means the same as defined in Section 78095 of the Health and Safety Code.

n) "Residential uses" includes, but is not limited to, housing units, dormitories, boarding houses, and group housing. "Residential uses" does not include prisons or jails.

o) "Use by right" means that the city's or county's review of the adaptive reuse project may not require a conditional use permit, planned unit development permit, or other discretionary city or county review or approval that would constitute a "project" for purposes CEQA. Any subdivision of the sites shall be subject to all laws, including, but not limited to, a city or county ordinance implementing the Subdivision Map Act.

4) Authorizes local governments to adopt implementing ordinances for the Office to Housing Conversion Act, so long as the ordinances are consistent with, and do not inhibit the objectives of this bill.

5) Establishes a streamlined, ministerial approval process for adaptive reuse projects using the Office to Housing Conversion Act, as follows:

a) An adaptive reuse project shall be deemed a use by right in all zones, regardless of the zoning of the site, and subject to the streamlined, ministerial review process, except that the nonresidential uses of a proposed mixed-use adaptive reuse project shall be consistent with the land uses allowed by the zoning or a continuation of an existing zoning nonconforming use.

b) The adaptive reuse project:

   i. Must comply with the following standards related to historic preservation and evaluation:

      b. Be proposed in an existing building that is less than 50 years old; or,

      c. Follow specific historic preservation protocols for projects proposed for an existing building that is listed on a local, state, or federal register of historic resources; or,

      d. Complete a preliminary application at the local level, as specified in (d), if the project is proposed for a building older than 50 years old. If the local government determines that the site contains a historic resource during this preliminary application, the project must follow the historic protocols specified in (ii).

   ii. Must comply with any broadly applicable housing affordability requirement adopted by the local government. Notwithstanding any other law, a local government shall not impose or enforce any broadly applicable housing affordability requirement on the housing units of an adaptive reuse project that requires the project to restrict more than 10 percent of retrofitted or repurposed units as affordable.

   iii. Must dedicate at least one-half of the square footage of the adaptive reuse project residential uses, unless the proposal is for the conversion of an office building, in which case the 50% residential threshold does not apply and the applicant must only build at least one residential unit.

   iv. Shall not include for purposes of calculating the required residential square footage any underground space, including basements or underground parking garages.

   v. Shall not develop the adjacent parcel under the streamlined provisions of the Office to Housing Conversion Act if the project proponent elects to only build one residential unit in an office conversion, less than the 50% residential threshold, and the streamlined approval process only applies to the new housing created.

   vi. Must complete a Phase I environmental assessment, and Phase II environmental assessment, if warranted, and complete any required mitigation or additional studies in response to those assessments, as specified.

   vii. May include rooftop structures that exceed any applicable height limit imposed by the local government, as long as the rooftop structure does not exceed one story and is used for shared amenities.

c) Allows adaptive reuse structures to include the development of new residential or mixed-use structures on undeveloped areas and parking areas on the parcels adjacent to the proposed adaptive reuse project site if all of the following requirements are met:

i. The adjacent portion of the project complies with:

a) Objective zoning, subdivision, and design review standards as they existed either when the development application was submitted or when a notice of intent was filed, whichever is earlier. Objective standards are defined as those that do not require subjective judgment and can be uniformly verified against external benchmarks, as specified in paragraph (5) of subdivision (a) of Government Code (GOV) Section 65913.4;

b) The Affordable Housing and High Road Jobs Act of 2022; or,

c) The Middle Class Housing Act of 2022.

ii. The adjacent portion of the project is on a legal parcel in an urbanized area or urban cluster, and at least 75% of the perimeter of the site is adjoined with urban uses.

iii. The adjacent portion of the project is not located in an environmentally sensitive zone, as defined in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

iv. The adjacent portion of the project complies with the tenant protection provisions outlined in paragraph (7) of subdivision (a) of Section 65913.4.

v. The applicant and local agency comply with the preapplication requirements outlined in subdivision (b) of Section 65913.4.

vi. Any existing open space on the proposed project site is not a contributor to a historic resource.

vii. The adjacent portion of the project shall be eligible for a density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios pursuant to Density Bonus Law.

d) Applies the following requirements to adaptive reuse projects proposed in buildings over 50 years old:

i. Requires a developer to submit a notice of intent to the local government prior to applying for an adaptive reuse project involving a building over 50 years old and not listed on any historic registers. This notice is a preliminary application containing all required details as specified.

ii. Provides the local government with 90 days upon receiving the notice, to assess the site for historic significance.

iii. Requires the developer to commit via affidavit, if the building is listed on a historic register, or deemed a significant historic resource, to comply with the U.S. Secretary

of the Interior's Standards for Rehabilitation or secure relevant historic rehabilitation tax credits (federal or state).

a) If the developer does not provide the affidavit for a project on a registered historic site, the local government may process the application under standard procedures of the Office to Housing Conversion Act, but the local government can deny or conditionally approve the project based on potential impacts to historic resources. Local agencies can impose conditions to lessen impacts on historic resources in line with the Secretary of the Interior's Standards for Rehabilitation, but cannot impose other conditions of approval not related to the historic preservation component.

viii. Establishes that the review of an adaptive reuse project under these rules does not classify it as a "project" under CEQA.

2) Applies the following review processes to all adaptive reuse projects under the Office to Housing Conversion Act:

a) Requires a local government to approve an adaptive reuse project meeting the objective planning standards specified in the regulations in a streamlined, ministerial process within a certain timeframe.

b) Requires a local government to document the reasons for any conflicts with the objective planning standards, and provide this documentation to the development proponent within specified timeframes:

a) 60 days for projects with less than or equal to 150 housing units, 90 days for projects with greater than 150 units.

c) Deems a project to satisfy the objective planning standards if the local government fails to provide the required documentation within the specified timeframes.

d) Considers a project consistent with objective planning standards if there is substantial evidence that would allow a reasonable person to conclude that the project is consistent with the objective planning standards. The local government cannot base its decision on the basis of materials not submitted with the application if the existing materials provide substantial evidence of compliance.

e) Requires all relevant local government departments to comply with the following requirements and timelines when an application for streamlined, ministerial approval is submitted:

i. Design reviews must be objective and focused only on assessing compliance with the criteria required for streamlined projects under the Act. Design review, and if all standards are met, approval, must be completed within 90 days for projects with less than or equal to 150 units, and 180 days for larger ones.

a) That design review shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects. It shall not inhibit, chill, or preclude ministerial approval.

f) Allows development proponents to request modifications to adaptive reuse projects approved before the final building permit is issued. Modifications must be consistent with the objective planning standards in effect when the original application was submitted, with some exceptions. The local government evaluates modifications for consistency using the objective criteria as the original project approval, and the review of modifications benefits from a streamlined, ministerial process. Local governments must make decisions on modifications within 60 days, or 90 days if design review is required.

g) Establishes that project approvals remain valid for three years, extendable by a one-time, one year if substantial progress is demonstrated, unless the following conditions are met:

    a) If the project includes public investment in housing affordability beyond tax credits, or at least 20% of the units are affordable to households making at or below 80 percent of the area median income, then the project approvals shall not expire.

    b) If the qualified adaptive reuse project proponent requests a modification, then the time during which the approval shall remain valid shall be extended for the number of days between the submittal of a modification request and the date of its final approval, plus an additional 180 days to allow time to obtain a building permit. If litigation is filed relating to the modification request, the time shall be further extended during the litigation.

h) Prohibits local governments from imposing automobile parking standards on the adjacent portion of the project if it meets specific conditions, such as proximity to public transit or location within historic districts. If the conditions specified in the Office to Housing Conversion Act are not met, parking requirements cannot exceed one space per unit.

i) Requires local governments to issue subsequent permits (such as demolition, grading, and building permits) for approved adaptive reuse projects in the manner specified. The processing of these permits should occur without unreasonable delays and without imposing any additional requirements that are not typically required for other projects. The review and approval of subsequent permits must adhere to the objective standards that were applicable when the original project application was submitted, unless the project proponent agrees to updated standards.

j) If a project involves public improvements like sidewalks, driveways, utility connections, etc., on local government land, the local government is required to approve these improvements without using discretionary powers. The local government must evaluate these public improvement applications based on the objective standards in effect at the time of the original project submission. The review should be conducted in the same manner as it would for any other project.

k) Prohibits local governments from imposing special requirements solely because the project has streamlined or ministerial approval. They must also avoid unnecessary delays in reviewing and approving these public improvement applications.

l) Prohibits a local government from imposing any requirements, such as increased fees inclusionary housing requirements, that do not apply to other housing developments that do not receive streamlined, ministerial approvals.

m) Exempts adaptive reuse projects from all impact fees that are not directly related to the impacts resulting from the change of use of the site from nonresidential to residential or mixed use. Any fees charged shall be proportional to the difference in impacts caused by the change of use. This does not apply to any adjacent portion of the project.

n) Requires proponents of adaptive reuse projects to sign a contract committing to pay designated fees within a specified timeframe. The obligation to pay fees benefits the local government imposing them and is enforceable by them, even if they are not a party to the contract.

3) Gives Department of Housing and Community Development (HCD) enforcement authority over the Office to Housing Conversion Act.

EXISTING LAW:

1) Establishes, pursuant to AB 1490 (Lee, Chapter 764, Statutes of 2023), a ministerial, streamlined approval process for the adaptive reuse of buildings into 100 percent affordable housing. (Government Code (GOV) Section 65913.12)

2) Establishes, pursuant to SB 423 (Wiener, Chapter 778, Statutes of 2023), a streamlined, ministerial approval process, not subject to CEQA, for certain infill multifamily affordable housing projects that are compliant with local zoning and objective standards and that are proposed in local jurisdictions that have not met their regional housing needs allocation. (GOV 65913.4)

3) Establishes, pursuant to AB 2011 (Wicks, Chapter 647, Statutes of 2022), a streamlined, ministerial approval process, not subject to CEQA, for certain infill multifamily affordable housing projects that are located on land that is zoned for retail, office, or parking. (GOV 65912.100-65912.140)

4) Establishes, pursuant to SB 6 (Caballero Chapter 659, Statutes of 2022), the Middle Class Housing Act of 2022, allowing residential uses on commercially zoned property without requiring a rezoning. (GOV 65852.24)

5) Authorizes the California Department of Housing and Community Development (HCD) to enforce state housing laws. (GOV 65585)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "COVID-19 permanently altered the way humans approach work. In the post pandemic era, many businesses realized that developments in technology allow them to move away from the 9 to 5, commuter model that kept downtown office buildings full of people during the work week. As the capital of technological innovation,

California has been particularly impacted by this transition as more and more tech companies shift to offering remote work as a benefit to their employees.

A major downside to this transition is California's emptying downtown business districts. Office vacancies across the state have hit record highs with Los Angeles and San Francisco both reaching over 30% vacancy rates. Many economists are theorizing that unless local and state governments act quickly, downtowns may be facing a doom-loop scenario with empty, devalued buildings leading to a severe decrease in local government tax bases, leading to decreased services and blight.

Converting vacant office buildings into new residential units will not only stop doom-loop scenarios, it will also revitalize and enliven business districts that often became ghost towns after 5pm. California also continues to suffer from a statewide housing shortage – to address this local governments must plan for the production of more than 2.5 million homes in the next several years.

Office to housing conversion is a win-win scenario that builds housing, preserves historic buildings, and creates new thriving communities in transit rich areas. California needs to get out of its own way and make office to housing conversions as easy as humanly possible. This bill does exactly that."

Statewide Housing Needs: According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update,[1] California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.[2]

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle. As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- 2.1 percent of the very low-income RHNA
- 4.8 percent of the low-income RHNA
- 4.8 percent of the moderate-income RHNA
- 12.7 percent of the above moderate-income RHNA

Cost of building housing: It is expensive to build housing in California. The UC Berkeley Terner Center finds that challenging macroeconomic conditions, including inflation and high

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[1] California Department of Housing and Community Development, *A Home for Every Californian*: 2022 Statewide Housing Plan. March 2022, https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136
[2] U.S. Department of Housing and Urban Development, Point in Time Counts. https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html

interest rates, affect the availability and cost of capital, resulting in rising costs for labor and materials.[3] Furthermore, workforce and supply shortages have exacerbated the already high price of construction in California, and economic uncertainty has made equity partners and lenders apprehensive about financing new housing development proposals.[4]

An analysis by the California Housing Partnership compares the cost of market rate development prototypes developed by the Terner Center with the median cost of developing affordable rental homes. In the four regions analyzed, the study found that the cost of developing one unit of affordable housing ranged from approximately $480,000 to $713,000, while the cost of developing one unit of market rate housing in the state ranged from approximately $508,000 to $637,000.[5]

Recent State Efforts to Address the Housing Crisis: In recent years, the state has taken a series of steps to address land use and regulatory constraints to new housing production. These include polices such as allowing accessory dwelling units by right,[6] reforming single family zoning,[7] and reforming the process local governments use to determine how much, where, and how to plan for housing.[8] The state has also enacted measures to expedite the approval of affordable housing. This includes measures to make supportive housing a by right use,[9] and make affordable and market-rate housing by right in jurisdictions where housing production is below identified targets.[10] This also includes measures to regulate and normalize the housing approval process,[11] and limit the ability of local governments to deny, delay, or diminish projects that otherwise meet all of local objective standards.[12] These recent efforts included the passage of AB 2011 (Wicks, Chapter 647, Statutes of 2022), also known as the Affordable Housing and High Road Jobs Act of 2022. AB 2011 went into effect on July 1, 2023. AB 2011 allows housing development in areas that are zoned for parking, retail, or office buildings, and provides eligible developments with a streamlined, ministerial approvals process.

Adaptive Reuse: Adaptive reuse is the process of converting an existing non-residential building to housing. The ability to adaptively reuse a building is highly dependent on the initially designed use. For example, uses such as warehouses and big box retail could not functionally be adaptively reused, because their tall ceilings, single stories, and rudimentary plumbing would need to be completely reconstituted to be appropriate for human habitation. Office buildings maintain some potential for conversion, because their multi-floor layout is conducive to housing;

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[3] David Garcia, Ian Carlton, Lacy Patterson, and Jacob Strawn, *Making It Pencil: The Math Behind Housing Development (2023 Update)*, Terner Center for Housing Innovation, December 2023, https://ternercenter.berkeley.edu/research-and-policy/making-it-pencil-2023/
[4] IBID.
[5] Mark Stivers, *Affordable Housing Compares Favorably to Market-Rate Housing From a Cost Perspective*, California Housing Partnership, January 2024: https://chpc.net/affordable-housing-compares-favorably-to-market-rate-housing-from-a-cost-perspective/#:~:text=It%20turns%20out%20that%20costs,market%2Drate%20developments%20do%20not.
[6] AB 2299 (Bloom), Chapter 735, Statutes of 2016 and SB 1069 (Wieckowski), Chapter 720, Statutes of 2016.
[7] SB 9 (Atkins), Chapter 162, Statutes of 2021.
[8] This includes many bills, including AB 72 (Santiago), Chapter 370, Statutes of 2017, AB 1397 (Low), Chapter 375, Statutes of 2017, SB 166 (Skinner), Chapter 367, Statutes of 2017, AB 686 (Santiago) Chapter 958, Statutes of 2018, AB 1771 (Bloom) Chapter 989, Statutes of 2018, and SB 828 (Wiener), Chapter 974, Statutes of 2018.
[9] AB 2162 (Chiu), Chapter 753, Statutes of 2018.
[10] SB 35 (Wiener), Chapter 366, Statutes of 2017, SB 423, Chapter 7778, Statutes of 2023.
[11] SB 330 (Skinner), Chapter 654, Statutes of 2019.
[12] AB 1515 (Daly), Chapter 378, Statutes of 2017, and SB 167 (Skinner), Chapter 368, Statutes of 2017.

however, the large floor plate configuration of most office buildings makes it difficult to provide the necessary light and air that is required for residential units throughout 100% of the building's square footage. For these conversions to occur, it would also need to be financially attractive to the property owner – something that has recently increased due to the sharp downturn in the downtown office market since the beginning of the COVID-19 pandemic.

According to an April 24, 2020 brief published by McKinsey and Company, the onset of COVID-19 has aggravated the existing challenges that the retail sector faces, including:

a) A shift to online purchasing over brick-and-mortar sales;
b) Customers seeking safe and healthy purchasing options;
c) Increased emphasis on value for money when purchasing goods;
d) Movement towards more flexible and versatile labor; and
e) Reduced consumer loyalty in favor of less expensive brands.

The buildings most readily converted to housing are hotels and motels. These uses are already divided into quarters designed for short-term human habitation, and units can readily be converted to housing with the addition of kitchens. The viability of this conversion is visible in the success of Project Homekey, which has created over 15,000 units of housing to date, with a cost of approximately $306,000 per unit - substantially less than the current cost to build newly constructed housing.

A local example of successful adaptive reuse can be found in the City of Los Angeles' Adaptive Reuse Ordinance (ARO). ARO has been a significant policy tool in revitalizing underused buildings within the city's downtown area. Introduced in 1999, the Ordinance was specifically designed to facilitate the conversion of existing commercial buildings into residential or mixed-use properties. By easing certain local requirements, the ARO has enabled developers to transform vacant or underutilized office buildings, theaters, and other commercial structures into vibrant residential units, contributing to urban density and reducing the need to build on undeveloped land. Notably, the Ordinance has been quite successful in adding housing stock to the city; since its inception, the ARO has led to the creation of over 12,000 residential units in downtown Los Angeles by some estimates, significantly impacting the local housing market and revitalizing the historic core of the city.

This bill would make the adaptive reuse of existing buildings mixed-use projects an allowable use in cities and counties, even if such a use conflicted with any local plans, zoning ordinances, or other regulations. The bill would also allow for the new construction of mixed-use developments on vacant or underutilized parcels adjacent to an adaptive reuse project. Local governments would be required to approve an adaptive reuse project that met the bill's specifications in an expedited timeframe.

Adaptive Reuse Funding. In the past three years, the Legislature has taken multiple actions to support adaptive reuse. HCD's Homekey program has allocated approximately $3.5 billion to convert hotels and motels to housing Californians at risk of, or experiencing, homelessness. Additionally, the 2022-2023 budget included $450 million one-time General Fund ($200 million in 2022-23 and $250 million in 2023-24) to convert existing commercial or office space to affordable housing. AB 1695 (Santiago, Chapter 639, Statutes of 2022) requires any notice of funding availability issued by HCD for an affordable multifamily housing loan and grant program to state that adaptive reuse of a property for an affordable housing purpose is an eligible

activity. SB 451 (Atkins, Chapter 703, Statutes of 2019), established a $50 million program to be administered by the Office of Historic Preservation (OHP) and the California Tax Credit Allocation Committee (CTCAC) for the purpose of facilitating the rehabilitation, including adaptive reuse, of historic buildings.

To help offset the costs associated with adaptive reuse projects, this bill would provide financial incentives for adaptive reuse projects in the following ways:

1) Authorizing local agencies to establish an Adaptive Reuse Investment Incentive Program, through which an amount up to or equal to 15 years' worth of the amount of ad valorem property tax revenues could be transferred to the owners of qualifying adaptive reuse projects;

2) Aligning program requirements so as to encourage the utilization of existing programs such as the Federal Historic Tax Credit, the newly adopted California Historic Tax Credit, the Mills Act, and the California Historical Building Code; and,

3) Limiting a local governments' ability to charge impact fees for adaptive reuse projects that are not directly related to the impacts resulting from the change of use of the site from nonresidential to residential.

Regarding the Adaptive Reuse Investment Incentive Program, this bill would allow for the transfer of property taxes collected by local agencies to market-rate developments with no affordability requirements. The California Constitution allows for the waiver of property taxes for a charitable purpose, as defined in statute. The Legislature defines a charitable purpose for purposes of a property tax welfare exemption, as a housing unit that restricted to 80% of the area median income (AMI) or less for 55-years. This bill would apply to property taxes collected by a local agency and therefore would not violate the welfare exemption. All local agencies wishing to establish an Adaptive Reuse Investment Incentive Program would need to "opt-in" to doing so through an authorizing local ordinance or resolution, to be approved by the governing body of a city or county. It is unclear why a local agency could not currently use their portion of property taxes currently to subsidize the housing developments envisioned under this bill.

Arguments in Support: According to YIMBY Action, one of the bill sponsors, California is in the midst of a generational shift in work culture. Offices in places like downtown Los Angeles and the financial district in San Francisco are seeing the highest vacancy rates in 30 years. Companies are shifting to hybrid work models with fewer employees working full-time in the office. California also continues to suffer from a statewide housing shortage. We have set an ambitious goal of creating 2.5 million new homes by 2030.

While there is desire to repurpose vacant and underutilized existing commercial buildings for residential and mixed uses, there are many challenges to doing so. Converting existing buildings to housing is sometimes lauded as more cost-effective than a new construction, but renovating an existing office building in California to allow housing is often more expensive than a complete tear-down redevelopment.

AB 3068 would create the Office to Housing Conversion Act (the Act). The Act addresses barriers to converting existing commercial buildings to housing and mixed uses, allowing more

people to live closer to work centers and transit, without changing the physical character of existing neighborhoods, and helps to preserve historic buildings."

Arguments in Opposition: According to the City of Santa Clarita, "the bill's provisions to require permits and entitlements to be conducted within 60 days if the project contains fewer than 150 housing units, and 90 days if the project is larger, jeopardizes the due diligence and responsibilities held by local governments to ensure projects are vetted to preserve public health, safety, and welfare. The City's regular entitlement and permit review process spans 6-9 months. Furthermore, the City has the tools, knowledge, and policies in place to continue to plan and develop innovative residential units that enhance the quality of life for our community. It is critical for the City to maintain local land use and zoning authority and ensure that we continue to have the ability to consider unique factors when reviewing residential development."

Committee Amendments: Staff recommends the following amendments be made to AB 3068 to prioritize residential square footage, promote housing development in infill locations, increase the affordability requirements, and add in labor requirements, as follows:

1) Provide that the Adaptive Reuse Investment Incentive Program shall only be used to offset the cost of the affordable housing units associated with adaptive reuse projects.

2) Restricts the utilization of the Office to Housing Conversion Act to urbanized areas and urban clusters, and on parcels where at least 75% of the perimeter of the site adjoins parcels developed with urban uses.

3) Incorporate the following affordability requirements for all development under AB 3068, which must be met unless the local government has a higher local affordability requirement, in which case the local standard shall apply:

    a) For rental housing:

        1) Either 8% of the units affordable for very low-income households, and 5% of the units for extremely low-income households; or 15% of the units for lower-income households.

4) For owner-occupied housing:

        1) Either 30% of the units affordable for moderate-income households; or 15% of the units for lower-income households.

5) Require a minimum of 50% residential square footage for all qualifying adaptive reuse projects.

6) Requires the addition of Labor Standards included in a previous streamlining bill, AB 2011 (Wicks), for all developments subject to the Office to Housing Conversion Act.

Related Legislation:

AB 2488 (Ting). Would authorize a local government to designate one or more downtown revitalization and economic recovery financing districts for the purpose of financing office-to-residential conversion projects with incremental tax revenues generated by office-to-residential conversion projects within the district.

AB 2909 (Santiago). Would facilitate the adaptive reuse of qualified historic properties, starting January 1, 2026, and ending January 1, 2036, by incentivizing property owners of buildings that are at least 30 years old through tax benefits to engage in such preservation and reuse activities.

AB 1490 (Lee), Chapter 764, Statutes of 2023. Established a streamlined, ministerial approval process for "extremely affordable adaptive reuse projects."

AB 529 (Gabriel), Chapter 743, Statutes of 2023. Required the Department of Housing and Community Development to convene a working group no later than December 31, 2024, to identify challenges to, and opportunities that help support, the creation and promotion of adaptive reuse residential projects, as specified, including identifying and recommending amendments to state building standards

SB 423 (Wiener), Chapter 778, Statutes of 2023. Amended SB 35 (Wiener), which created a streamlined, ministerial local approvals process for housing development proposals in jurisdictions that have failed to produce sufficient housing to meet their RHNA.

SB 6 (Caballero), Chapter 659, Statutes of 2022. Established the Middle Class Housing Act of 2022, allowing residential uses on commercially zoned property without requiring a rezoning.

AB 1695 (Santiago), Chapter 639, Statutes of 2022. Requires any notice of funding availability issued by HCD for an affordable multi-family housing loan and grant program to state that adaptive reuse of a property for an affordable housing purpose is an eligible activity.

AB 2011 (Wicks), Chapter 647, Statutes of 2021: Created the Affordable Housing and High Road Jobs Act of 2022, creating a streamlined, ministerial local review and approvals process for certain affordable and mixed-use housing developments in commercial zoning districts and commercial corridors. A current bill, AB 2243 (Wicks) would amend AB 2011 to facilitate the conversion of office buildings to residential uses, among other provisions.

SB 451 (Atkins), Chapter 703, Statutes of 2019. Established a $50 million program to be administered by the Office of Historic Preservation (OHP) and the California Tax Credit Allocation Committee (CTCAC) for the purpose of facilitating the rehabilitation of historic buildings.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

YIMBY Action (Sponsor)
California Preservation Foundation (Co-Sponsor)
Abundant Housing LA
Advance SF
Aids Healthcare Foundation
Bay Area Council
BOMA San Francisco
California Apartment Association

California Community Builders
California YIMBY
CivicWell
East Bay YIMBY
Emerald Fund
Fieldstead and Company
Grow the Richmond
Housing Action Coalition
Housing Trust Silicon Valley
Lendlease
Livable Communities Initiative
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
Plant Construction
Presidio Bay Ventures
Progress Noe Valley
Related California
San Francisco Chamber of Commerce
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
SPUR
Streets for People
Union Square Alliance
Urban Environmentalists
Ventura County Yimby
Webcor Builders

Opposition

City of Santa Clarita

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 3116 (Garcia) – As Introduced February 16, 2024

SUBJECT: Housing development: density bonuses: student housing developments

SUMMARY: Makes numerous modifications to Density Bonus Law (DBL) as it applies to student housing projects. Specifically, **this bill**:

1) Expands the density bonus for lower income students to include lower income faculty and staff.

2) Changes the density bonus for lower income students from "units" to "bedspaces."

3) Requires all bedspaces in a student housing development be used exclusively for undergraduate, graduate, or professional students unless there are not a sufficient number of qualified students, staff or faculty applicants to fill all the bedspaces in the student housing development.

4) Changes the qualifications that students must meet to live in a student housing development from being enrolled full time to having enrolled currently or in the past two years in at least six units unless there are not enough lower income students, staff or faculty to fill the units.

5) Revises the density bonus authorized for student housing to require 20% of the total bedspaces be limited to lower income students, faculty members, or staff rather than 20% of the total units be limited lower income students.

6) Expand the type of students that qualify for units in a density bonus project to include those students that are enrolled currently or in the past two years in a least six units at an accredited university or community or junior college.

7) Allows a developer, to prove that students qualify for the density bonus units, instead of requiring a master lease, by establishing a system for confirming the renters' status as students, faculty, or staff to ensure that all units of the student housing development are occupied with students, faculty, or staff from an institute of higher education.

8) Allows a local government to exempt the following types of units from the requirement that all units in a student housing development are exclusively for qualifying students, staff, or faculty and units set aside for lower income students:

    a) Units necessary to replace affordable units demolished as a result of the housing;

    b) A manager unit; and

    c) Units occupied by or made available to professors of the institution.

9) Allows a developer to lease or sublease bedspaces to non-students during the period of time between the last day of the spring semester or quarter and the first day of the fall semester or quarter.

10) Requires all bedspaces reserved for lower income students to be either located in a student private bedroom or a student shared bedroom and leased to a lower income student or a lower income graduate student faculty member or staff member, unless there are not a sufficient number of qualified staff or faculty applicants to fill all the unis in the student housing development.

11) Provides that if a bedspace reserved for lower income students is located in a student private bedroom, the bedroom must be leased at an affordable student private bedspace rent.

12) Provides that if a bedspace reserved lower income students is located in a student shared bedroom, the bedspace must be leased at an affordable student shared bedspace rent.

13) Requires a student housing development that has entered into an operating agreement or master lease with one or more institutions of higher education, and not a student housing development using a system established by a developer as described in 7)a), to provide priority for the applicable affordable units for lower income students experiencing homelessness.

14) Deletes the definition of "unit" for purposes of a student housing density bonus to mean one rental bed and its pro rata share of associated common area facilities for purposes of calculating a density bonus.

15) Provides that an affordability requirement for a student housing development shall not tie any bedspaces reserved for lower income students to a specific student private bedroom or student shared bedroom.

16) Provides that a state or county law or policy, or property management policy shall not prevent a lower income student from sharing a room or unit with a non-lower income student and any attempt to waive this requirement is void as against public policy.

17) Allows a student housing development that satisfies the requirements in this bill, and 100% of the total bedspaces are reserved for lower income students, faculty members, or staff members, to qualify for unlimited density.

18) Provides that the rents for both base density and density bonus units in a 100% student development that qualify for an unlimited density bonus shall be:

    a) The rent for a bedspace located in a student private bedroom shall not be more than the affordable student private bedspace rent; and

    b) The rent for a bedspace located in a student shared bedroom shall not be more than the affordable student shared bedspace rent.

19) Provides additional incentives or concessions for a student housing development as follows:

a) Two incentives or concessions if at least 20% of the total student housing bedspaces are for lower income students;

b) Three incentives or concessions for projects where at least 40% of the total student housing spaces are for lower income students; and

c) Five incentives or concessions for projects where at least 70% of the total student housing spaces are for lower income students.

20) Deletes the option or a developer to request only one incentive or concession for projects that include at least 20% of the total student housing bedspaces for lower income students.

21) Amends the definition of "density bonus" for student housing to mean a density increase over the otherwise maximum allowable student housing bedspace density.

22) Replaces the existing 35% density bonus for student housing with the following metrics:

Percent of Bedspaces Reserved for Lower Income Students	Percentage of Density Bonus
20%	50%
30%	70%
40%	90%
50%	100%
60%	120%
70%	150%
80%	170%
90%	190%
100%	200%

23) Adds the following definitions:

a) "Student housing development," as used in DBL, means a development project for six or more bedspaces, including mixed-use developments, that is intended to be occupied primarily by students enrolled at one or more institutes of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges, or by college or university faculty or staff.

b) "Student housing development" includes a development that provides bedrooms that are private bedrooms or shared bedrooms, provides bedrooms and shared facilities in a dormitory or an apartment configuration, the conversion of an existing commercial

building to student housing use, or the substantial rehabilitation of an existing multifamily dwelling already used exclusively for student housing where the result of the rehabilitation would be a net increase in available student housing beds.

c) "Affordable student private bedspace rent" means not more than 30% of the qualifying maximum income level for a one-person family at 65% of area median income (AMI), as published by the Department of Housing and Community Development in the "Official State Income Limits" in accordance with Section 50093 of the Health and Safety Code.

d) "Affordable student shared bedspace rent" means not more than 30% of the qualifying maximum income level for a one-person family at 40% of AMI, as published by the Department of Housing and Community Development in the "Official State Income Limits" in accordance with Section 50093 of the Health and Safety Code.

e) "Lower income graduate student, faculty member, or staff member" means a graduate student or employee of a college or university whose household income does not exceed that of a lower income household, as defined in Section 50079.5 of the Health and Safety Code.

f) "Maximum allowable student housing bedspace density" means a number of bedspaces that is equal to six times the number of units in the applicable maximum allowable residential density or base density.

g) "Student private bedroom" means a bedroom containing one bedspace that has a shared or private bathroom, has access to a shared or private living room and laundry facilities, and satisfies one of the following conditions:

   i) Has access to a shared or private kitchen; or

   ii) Is in a student housing development located within a 10-minute walk from a dining hall, and is leased to a student enrolled in a meal plan.

h) "Student shared bedroom" means a bedroom containing two or more bedspaces that has a shared or private bathroom, has access to a shared or private living room and laundry facilities, and satisfies one of the following conditions:

   i) Has access to a shared or private kitchen; or

   ii) Is in a student housing development located within a 10-minute walk from a dining hall, and is leased to a student enrolled in a meal plan.

24) Allows a developer to request zero parking spaces for a student housing development.

EXISTING LAW:

1) Provides that any density bonus, concessions, incentives, waivers or waivers of development standards, and parking ratios to which an applicant is entitled under density bonus law shall be permitted in a manner that is consistent with the Coastal Act. (GOV 65915)

2) Requires a city, county, or city and county to grant one density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios, if the

developer agrees to restrict at least 20% of the total units for lower income students and the housing development meets the following requirements:

a) All units in the student housing development shall be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges;

b) The developer, as a condition of receiving a certificate of occupancy, provides evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into is not violated or breached if, in any subsequent year, there are insufficient students enrolled in an institution of higher education to fill all units in the student housing development;

c) The applicable 20% units shall be used for lower income students;

d) The rent provided in the applicable units of the development for lower income students shall be calculated at 30% of 65% of AMI for a single-room occupancy unit type; and

e) The development shall provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined or institution of higher education that has knowledge of a person's homeless status may verify a person's status as homeless.

3) Requires that, for purposes of density bonus granted for a student housing development, the term "unit" means one rental bed and its pro rata share of associated common area facilities. Requires the units described in this subparagraph to be subject to a recorded affordability restriction of 55 years. (GOV 65915)

4) Allows an applicant for density bonus that agrees to restrict 20% of the total units in a development to student housing to request one incentive or concession for a housing development. (GOV 65915(d)(2)(E))

5) Defines "concession or incentive" as:

a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required, that results in identifiable and actual cost reductions to provide for affordable housing costs or for rents for the targeted units;

b) Approval of specified compatible mixed-use zoning in conjunction with the housing project that will reduce the cost of development; and

c) Other regulatory incentives or concessions proposed by the developer or the local government that results in identifiable and actual cost reductions to provide for affordable housing. (GOV 65915)

6) Requires a city, county, or city and county to grant a concession or incentive requested by an applicant unless the city, county, or city and county makes a written finding based upon substantial evidence of any of the following:

   a) The concession or incentive does not result in identifiable and actual cost reductions necessary to support the affordable housing costs or rents for the affordable housing units required;

   b) The concession or incentive would have a specific, adverse impact upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households; or

   c) The concession or incentive would be contrary to state or federal law.

7) Requires cities and counties to grant a density bonus, based on a specified formula, when an applicant for a housing development of at least five units seeks and agrees to construct a project that will contain at least one of the following:

   a) Ten percent of the total units of a housing development for lower-income households;

   b) Five percent of the total units of a housing development for very low-income households;

   c) A senior citizen housing development or age-restricted mobilehome park;

   d) Ten percent of the units in a common interest development (CID) for moderate-income households, provided the units are available for public purchase;

   e) Ten percent of the total units for transitional foster youth, disabled veterans, or homeless persons;

   f) Twenty percent of the total units for lower-income students in a student housing development, as specified; or

   g) One hundred percent of all units in the development for lower-income households, except that up to 20% of the units may be for moderate-income households. (GOV 65915)

8) Defines “shared housing” for purposes of Density Bonus Law to mean a residential or mixed-use structure with five or more shared housing units and one or more common kitchens and dining areas designed for permanent residence of more than 30 days by its tenants. The kitchens and dining areas within the shared housing building shall be able to adequately accommodate all residents. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of DBL. (GOV 65915)

9) Provides that a "shared housing building" may include other dwelling units that are not shared housing units, provided that those dwelling units do not occupy more than 25% of the floor area of the shared housing building. A shared housing building may include 100% shared housing units. (GOV 65915)

10) Provides that "shared housing unit" means one or more habitable rooms, not within another dwelling unit, that includes a bathroom, sink, refrigerator, and microwave, is used for permanent residence, that meets the "minimum room area" specified in Section R304 of the California Residential Code (Part 2.5 of Title 24 of the California Code of Regulations), and complies with the definition of "guestroom" in Section R202 of the California Residential Code. If a local ordinance further restricts the attributes of a shared housing building beyond the requirements established in this section, the local definition shall apply to the extent that it does not conflict with the requirements of DBL. (GOV 65915)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Students have historically faced significant barriers when it comes to housing. Affordability, location, and even transportation, are all crucial factors a student must take into consideration when deciding where they are going to live for the school year. As the Legislature tackles our state's affordable housing crisis, we must place an urgent priority on policies to protect our most vulnerable, at-risk populations, like our students."

Student Housing Insecurity: According to the author: "A recent report demonstrated that a majority of California college students experience housing insecurity.[1] Housing costs are often the largest non-tuition cost of attendance for students at colleges and universities in California, representing over half the cost of attending a UC or CSU in 2019.[2] The issue of housing cost is particularly prevalent at CCCs, where 3 in 5 students experience housing insecurity and 1 in 4 experience homelessness.[3] Given the scale of this problem, constructing more student housing is an urgent priority. While the UC, CSU, and CCC systems have made significant efforts to house students on campus in recent years, an estimated 2.3 million college and university students in California still rely on off-campus private housing."

Density Bonus Law: Density bonus law was originally enacted in 1979, to help address a shortage of affordable housing. 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 including affordable units in a development, developers are given an increase in density over a city's zoned density, concessions and incentives, and reductions in parking. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units.

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 zoned density in exchange for

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[1] California Student Aid Commission: *Food and Housing Bais Needs Survey 2023*

[2] Public Policy Institute California: *Higher Education in California: Making College Affordable*

[3] Community College League of California: *Real College California: Basic Needs Access Among California Community College Students*

including extremely low-, very low-, low-, and moderate-income housing. In addition to an increase in density, a developer can request concessions and incentives under DBL to reduce the cost of the development and support the inclusion of the affordable housing units. Failure to adopt an ordinance does not relieve a local government from complying with state DBL.

Student Housing Density Bonus: SB 1227 (Skinner), Chapter 937, Statutes of 2018, and SB 290 (Skinner), Chapter 340, Statutes of 2021, created a density bonus for developers that include housing for lower income students in a development. Developers that agree to restrict 20% of the units in a development to lower income students can receive a 35% density bonus and one concession or incentive. To be eligible for the density bonus, developers must provide proof at the time of receiving a certificate of occupancy that they have entered into a master lease with an accredit public or private university, college, or community college to occupy all the units for lower income students in the development. Developers are also required to provide priority for students experiencing homelessness. To meet this standard, a developer can verify with the university or college that student is attending or institution of higher education that the student is experiencing homelessness.

Impact of Student Housing on One Community: Generally, colleges and universities have failed to construct the housing needed to accommodate their student population. The result has been greater pressure on the surrounding community to absorb students into an already stressed and expensive rental market. In some communities the impact is felt more acutely; for example, in Los Angeles, the University of Southern California (USC) is nestled in a predominately lower-income community. According to a recent Los Angeles Times article, USC provides housing for only a small fraction of its nearly 49,000 students. It guarantees housing for first- and second-year undergraduates in 7,200 beds in residence halls and leased off-campus apartments, including the 800-unit University Gateway Apartments on Figueroa Street. An additional 1,300 off-campus units are leased to graduate students and their families.

To respond to the market pressure for additional student housing, private developers are purchasing existing buildings around USC and converting them to one-bedroom apartments or constructing new developments with efficiency units to build housing for students in response to demand. In the adjoining neighborhood on the west side of the campus, the Los Angeles Times' analysis of L.A. County Assessor records shows that 24 properties were purchased by limited liability corporations (LLCs) that year in the area bounded by Vermont and Western avenues and Jefferson and Exposition boulevards. Purchases by LLCs, a precursor to development, steadily increased in subsequent years, totaling 274 parcels through 2022. Los Angeles city building records show that 135 permits to construct duplexes and 10 for apartments have been issued in 2018 or later, and 191 demolition permits have been issued, indicating that more is yet to come.

The City of Los Angeles is working on a local ordinance to respond to the increased pressure student housing has had on the neighborhood surrounding USC in an effort to shift development toward other parts of the city and reduce displacement of existing residents.[4]

State Housing Need: Local governments are challenged with meeting the housing needs of residents at all income levels. According to the California Housing Partnership (CHP), the rate of severe cost burden (paying over half of income in rent) among moderate-income households

[4] https://www.latimes.com/california/story/2024-03-20/usc-student-housing-development-south-los-angeles-gentrification

remains low statewide at just six percent. It jumps to 24 percent for lower-households, 53 percent for very low-income households, and 78 percent for extremely low-income households. In addition, a recent study by CHP found that in most of the state, median-income renters (those at 100 percent of AMI, the midpoint of the moderate-income range) can afford average rent in 55 out of 58 counties. For very low-income renters there are only four counties where average rent is affordable, and there are no counties affordable to extremely low-income renters. The study further found that median-income households can afford average rent in all but 399 of California's 2,125 ZIP codes. Of those unaffordable ZIP codes, 227 are in Southern California, 67 are on the Central Coast, 47 are in San Diego, 42 are in the Bay Area, 10 are in the San Joaquin Valley, and six are in Greater Sacramento.

According to the Department of Housing and Community Development's (HCD's) Housing Element Data Dashboard, in the 5th Regional Housing Needs Allocation (RHNA) cycle so far, jurisdictions across the state have permitted the following:

- 19.9 percent of the very low-income RHNA
- 29.9 percent of the low-income RHNA
- 55 percent of the moderate-income RHNA
- 142.2 percent of the above moderate-income RHNA

Local governments have an obligation to plan and zone for housing by income level. The current housing element cycle, the sixth cycle, requires local governments to plan for 3.5 million housing units, a considerable increase over the past cycle.

Changes This Bill Makes to the Current DBL for Student Housing:

- Allows faculty members or staff to rent student housing density bonus units;

- Allows developers to establish their own system for confirming student, faculty, and staff's renter status rather than entering into an operating agreement or master lease with a university or college;

- Removes the requirement that a developer prioritize housing for lower income students experiencing homelessness if they do not master lease the units with a university and instead use their own system for confirming students renter status;

- Allows a development where 100% of the total units are reserved for lower income students to get an 80% density bonus, and in areas within a one-half mile of a major transit stop, the local government cannot impose a maximum density;

- Increases the number of concessions and incentives a developer could receive commensurate with increased amounts of student housing beds for lower income units;

- Changes the set amount of a 35% density bonus for 20% restricted units for lower income students to a sliding scale of up to a 200% increase in density (see bill summary);

- Adds a definition of student housing development that includes: mixed income developments, a dormitory, conversion of existing commercial building, or substantial rehabilitation of an existing multifamily building;

- Adds a rent standard for a shared bedspace for student housing of no more than 30% of the maximum income level for a one-person family at 40% of AMI (for a single room or private bedroom the rent is not more than 30% of the income for a one-person family at 65% of AMI);

- Creates a "maximum allowable student housing bedspace density" to mean the number of bedspaces is six times the number of units in the maximum allowable residential density or base density;

- Adds a definition of "student private bedroom" and "student shared bedroom" that requires a student either to have access to a private or shared kitchen, or to be located within a 10-minute walk from the a dining hall and be enrolled in a meal plan; and

- Prohibits a local government from imposing a parking standard on bedspace in a development with student housing.

Bed Versus Units/Density: Under existing law, the density for housing development using density bonus law is based on the density in the general plan and local zoning ordinances. The number of units is generally based on a per-acre count. When calculating the density bonus, the local government must use the maximum density in the underlying land use documents. For student housing, under existing law, a unit is one bed and its pro rata share of the common area. This bill adds a calculation that maximum allowable residential density or base density means that the number of bedspaces allowed is six times the number of units in the applicable maximum allowable residential density or base density. This calculation appears to be irrespective of the number of bedrooms required, which at its most extreme could possibly result in six beds in a studio apartment.

If a developer limited 100% of the units to income-qualified student units, the total density bonus would be 200%, which is much higher than what is allowed under existing density bonus law for lower income households – a 50% bonus for including 24% of the units for lower-income households. Existing law allows for unlimited density for developments that restrict 100% of the units for lower-income households (20% can be for moderate-income) – this bill would apply that provision to student housing developments.

Occupancy Expansion: The student housing density bonus requires students to be enrolled currently in an institution of higher learning. This bill would change that requirement to apply to students that have been enrolled in a university or college in the last two years and part-time students with as few as six units to count. Given the dire need for student housing, should the affordable units created through a density bonus for students go toward students currently enrolled in school? This bill also provides a developer relief even from this requirement "if there are an insufficient number of qualified student, staff, or faculty applicants." This seems unlikely given the need for affordable student housing.

Rent Calculation: This bill would set the allowable affordable bedspace rent in shared rooms at 30% of 40% of the AMI for a one-person household. In the City of Los Angeles, for example, the 2023 median income for a one-person household is $88,800, and 40% of AMI is $35,320.[5]

[5] "2023 Rent and Income Schedules," Los Angeles Housing Department

Under this bill, 30% of $35,320 would equate to a monthly rent of $883 for a bedspace in a shared room. If a developer rents a one-bedroom unit to three students, the total rent for that unit in the City of Los Angeles could be $2,649. Under Los Angeles's same 2023 rent schedule, an affordable one-bedroom density bonus unit at 50% of AMI (higher than what is contemplated in this bill) with no local or state funding may only charge $925 in rent for the entire unit.[6] Similarly, in Alameda County, 40% of AMI for a one-person household is $41,440, and 30% of that figure would equate to a monthly rent of $1,036 for a bedspace in a shared room, or cumulative rent for a "triple" yielding $3,108 per month. A two-bedroom unit with six beds, the upper density limit in the bill, could yield total monthly rent of $6,216 in Alameda County.

***Policy Questions*:**

1) Is it reasonable that the state would provide a density bonus for a shared unit in a student housing development that could house, for example, three students and the developer could charge, based on the affordable rent included in the bill, upwards of $800 per bed per month? Or, for example, nine students in a three-bedroom unit, which could yield close to $8,000 in total unit rent per month in Los Angeles?

2) Is it reasonable for the state to provide a 200% density bonus for a student housing development, when projects including large proportions of lower income units do not receive anywhere close to a 200% density bonus?

3) Is it reasonable for the state to create a new density bonus scheme for cities like Los Angeles who are developing local measures to deal with very specific circumstances, like the growth of private student housing around the USC campus?

4) How would the summer sublet scheme allowed in the current version of the bill work? Would the non-student subletters accrue tenancy status under the requirements of the Civil Code? What would happen if fall term begins and subletters do not wish to vacate their bedspace? Would subletters be charged rent differently than students under the bill?

5) Given the dire need for student housing, should the affordable units created through a density bonus for students go toward students currently enrolled in school, rather than expanding the definition to include people who were enrolled in the prior two years?

Arguments in Support: According to one of the sponsors, the UC Student Coalition, "There is an extreme student and faculty housing shortage on UC, CSU, and CC campuses. UCs only have beds for 35% of their enrolled students, and CSUs only have beds for 14% of their students. Only 12 out of 116 community colleges in California provide housing. Colleges across California do not have the resources to provide housing for all, or even a majority, of their students. As such, over 2.3 million students at UCs, CSUs, and CCCs live off campus. With many of California's largest universities in high-cost housing markets, students often struggle to find housing they can afford near their campus. Many higher education institutions, especially CSUs and CCCs, do not have the funding to build sufficient student housing on campus. Due to strict local zoning and a lack of non-university funding options for affordable student housing, students also often end up in substandard living conditions – or worse,

[6] https://housing2.lacity.org/partners/land-use-rent-income-schedules - see HCD Schedule 6

homeless. By creating more off-campus housing, AB 3116 will help address the student housing crisis and reduce student homelessness. It will also work to prevent gentrification by reducing student competition against vulnerable populations for scarce housing opportunities in college communities."

Arguments in Opposition: None on file.

***Committee Amendments*:** The committee may wish to consider the following amendments which address the concerns raised in the bill:

- Delete the expansion of the student housing density bonus to staff and faculty;
- Delete the new calculation of maximum allowable density as six beds per unit;
- Delete the option for short-term rentals of student housing units during the summer months;
- Delete the new density bonus chart for student housing, but allow student housing developments to access the existing metrics;
- Delete the expansion of the unlimited density bonus for 100% lower income developments to student housing developments;
- Preserve the new allowable concessions and incentives that would be allowed for student housing based on the inclusion of more affordable units; and
- Delete the new scheme in the bill that creates "student private bedroom" and "student shared bedroom."

Limit the bill to the following provisions:

- Allow a developer, to prove that students qualify for the density bonus units, instead of requiring a master lease, by establishing a system for confirming the renters' status as a student to ensure that all units of the student housing development are occupied with students from an institute of higher education.
- Allow a developer to request zero parking spaces for a student housing development.
- Delete the limitation in existing law that only allows for a 35% density bonus for student housing and allow a developer that agrees to include a percentage of student housing to access the existing density bonus formula for lower income housing.
- Allow developers to receive two concessions and incentives for including 20% of the units in a development for students.

Related Legislation:

AB 1630 (Garcia) (2023**)** would have made student housing as defined an allowable use on land within 1,000 feet of a university campus and would have created a ministerial, streamlined approval process for the housing. This bill was referred to Assembly Housing and Community

Development Committee or Assembly Local Government Committee, it was not heard by either committee.

SB 886 (Weiner), Chapter 663, Statues of 2022 exempts, until January 1, 2030, faculty and staff housing projects and student housing projects meeting specified requirements from the California Environmental Quality Act (CEQA).

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Generation UP (Co-Sponsor)
Los Angeles Housing Production Institute (Co-Sponsor)
Student Homes Coalition (Co-Sponsor)
University of California Student Association (Co-Sponsor)
California Competes: Higher Education for a Strong Economy
California State University Employees Union
College Democrats at UC Santa Cruz
Davis College Democrats
Housing Action Coalition
Telegraph for People
Youthbridge Housing

Opposition

None on file.

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

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 3122 (Kalra) – As Introduced February 16, 2024

SUBJECT: Streamlined housing approvals: objective planning standards

SUMMARY: Revises the threshold at which a local government can apply recently adopted objective planning standards when a development approved under the streamlined ministerial process established by SB 423 (Wiener), Chapter 778, Statutes of 2023 is modified by the development proponent. Specifically, **this bill**:

1) Authorizes a local government to apply objective planning standards adopted after an approved SB 423 development application was first submitted when a developer requests to modify the project in the following ways:

    a. The total square footage of the development increases by 15% or more, exclusive of underground space, or the total number of units decreases by 15% or more; or,

    b. The total square footage of the development increases by 5% or more, exclusive of underground space, or the total number of units decreases by 5% or more, and the local government deems it necessary to subject the development to new standards that were not in effect when the development was first proposed to reduce a specific harm to public health or safety, with no feasible alternative method to mitigate the adverse impact.

EXISTING LAW: Establishes all of the following pursuant to SB 423 (Wiener, Chapter 778, Statutes of 2023), as provided in Government Code (GOV) Section 65913.4:

1) Allows a development proponent to submit an application for a development that is subject to a by right approval process, which is required to be approved by the local government and not subject to the California Environmental Quality Act (CEQA), if the development meets certain conditions, including locational, affordability, and labor requirements.

2) Specifies the process for approval by a local government of the proposed project, including that:

    a) If a local government determines that a development submitted pursuant to the bill's provisions is in conflict with any objective planning standards, it must provide the development proponent written documentation within specified timeframes of which standards the development conflicts with, and what the conflict is.

    b) Design review or public oversight must be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction.

c) Design review or public oversight must be completed in a specified timeframe, and must not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable.

d) The development proponent may request modifications to a development approved under SB 423 if the request is submitted to the local government before the local government issues the final building permit required for construction.

e) The local government's review of any modification requests must follow established timeframes and requirements, including that the local government can only apply objective planning standards adopted after the development application was first submitted if the requested modification:

   i) Changes the total number of residential units or square footage by 15% or more, exclusive of any underground space; or

   ii) Changes the total number of residential units or square footage by 5% or more, exclusive of any underground space, and the local government deems it necessary to subject the development to new standards that were not in effect when the development was first proposed to reduce a specific harm to public health or safety, with no feasible alternative method to mitigate the adverse impact.

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, *"*housing developers have experienced challenges with the changing market trends, such as less demand for office space or increasing cost of construction. Clarifying the 15% threshold in SB 35 will allow projects to reduce the size of their project or to increase the residential units. During a time when California is facing a housing crisis, and cities and counties must build housing to meet the growing population, so modifying the 15% threshold, will give projects the flexibility to make those changes needed to respond to the changing market conditions. AB 3122 will help these housing projects move forward and ensure these developments are successful and can provide the housing our cities and counties need."

Statewide Housing Needs: According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update,[1] California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians

[1] California Department of Housing and Community Development, *A Home for Every Californian*: 2022 Statewide Housing Plan. March 2022, https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136

experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.[2]

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle, and would require production of over 300,000 units a year, including over 120,000 units a year of housing affordable to lower income households. By contrast, housing production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.[3] As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- 2.1 percent of the very low-income RHNA
- 4.8 percent of the low-income RHNA
- 4.8 percent of the moderate-income RHNA
- 12.7 percent of the above moderate-income RHNA

Making it Easier to Approve Housing Projects: In most jurisdictions, the process to approve new housing is arduous, unpredictable, and expensive. It often requires multiple levels of approval from local governments, and navigation of an environmental review process that greatly empowers opponents of new housing. This is often the case even when a housing project meets all of the local government's objective standards for development.

Recognizing this issue, in recent years the Legislature has passed several bills that override the local approval process for housing projects that meet objective standards. This includes accessory dwelling unit law (established in 2016 by AB 2299 (Bloom), Chapter 735, and SB 1069 (Wieckowski), Chapter 720), multi-family housing that complies with local zoning standards (SB 35), the allowance of duplexes and lot splits (SB 9 (Atkins), Chapter 162, Statutes of 2021), and the allowance of multi-family mixed-income housing along commercial corridors (AB 2011 (Wicks), Chapter 647, Statutes of 2022).

In 2023, SB 423 (Wiener) amended SB 35 (Wiener), creating a streamlined, ministerial local approvals process for housing development proposals in jurisdictions that have failed to produce sufficient housing to meet their RHNA. To access the by-right process, the project must meet a number of requirements, including that the development includes a percentage of affordable housing units, meets specified labor standards, is not on an environmentally sensitive site, and would not result in the demolition of existing housing. Localities are allowed to provide design review, and are allowed to apply their own objective development standards, but they must approve the development project in specified timeframes. The streamlining provisions established in SB 423 create a critical pathway for expedited housing approvals that follow clear and objective standards.

The Need for Flexibility: Existing law requires any modifications to housing projects approved pursuant to SB 423 to be subject to the same objective standards of the original approval, with certain exemptions, including that the unit count or square footage of the approved project

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[2] U.S. Department of Housing and Urban Development, Point in Time Counts. https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml

cannot "change" by more than 15%. If local regulations have changed from the time of initial project submittal, the 15% change threshold could constrain a developer's ability to modify their project. For example, an approved proposal to reduce square footage by more than 15% in response to market conditions could be precluded if local zoning regulations would no longer permit the uses contained in the approved project. The 15% limit also does not allow for larger increases in the unit count, which limits the ability to use some of the recent amendments to expand upon Density Bonus Law.

These limitations have affected entitled developments in the housing pipeline. Developers might need to revise their housing development proposals after initial approval for a variety of reasons, including changing market conditions, financial constraints, and unforeseen site challenges. For instance, the COVID-19 pandemic led to a significant shift in work habits, with many white-collar workers transitioning to remote or hybrid work, which in turn reduced the demand for new office space and ground floor commercial uses. Additionally, developers may encounter difficulties in completing their capital stack in a timely manner due to changes in investor sentiment, fluctuations in interest rates, or stricter lending criteria from banks, impacting overall project feasibility. It can take years for affordable housing projects relying on local, state, or federal funds to complete their capital stacks, and market conditions can change while this pursuit is underway.

Without the changes proposed in AB 3122, projects may not be able to respond to changes in the market and, as a result, may not move forward at all. With this bill, projects can be "right sized" as market conditions change and are more likely to be built. This bill would be beneficial from a housing supply perspective as well as it allows developers to increase their approved projects by more than 15% of the initially approved units without having new standards applied to their projects, so long as the total project square footage does not increase by more than 15%.

As with the creation of any new program, the Legislature was not able to anticipate all scenarios that could arise with the implementation of SB 35, and subsequent amendments in SB 423. However, the Legislature intended for the provisions of SB 423 to help ensure that projects contemplated by the law were approved to help build affordable housing. AB 3122 is well aligned with that stated intent.

Arguments in Support: According to the sponsor SPUR, and other members of the California Home Building Alliance, AB 3122 "will allow for streamlined housing production in California in counties and cities that are not building enough housing to keep up with state housing construction requirements. The bill amends the 2017 statute in SB 35 to adjust the 15 and five percent thresholds on projects being revised after approval without being subject to local objective planning standards. In turn, this will enable project size to be rationalized by excluding or reducing non-residential components.

This bill will fix a scenario the Legislature did not account for with the implementation of SB 35. It will provide much needed clarification to the SB 35 application process by modifying the 15 percent and five percent threshold in existing law. This will enable approved housing projects to increase square footage for construction or allow residential units to not be subjected to local government objective planning standards."

Arguments in Opposition: None on file.

Related Legislation:

SB 423 (Wiener), Chapter 778, Statutes of 2023. Amended SB 35 (Wiener), which created a streamlined, ministerial local approvals process for housing development proposals in jurisdictions that have failed to produce sufficient housing to meet their RHNA.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Bay Area Planning and Urban Research Association (Sponsor)
Abundant Housing LA
Bay Area Council
California Community Builders
California YIMBY
Housing Trust Silicon Valley
MidPen Housing
Sand Hill Property Company
YIMBY Action

Opposition

None on file.

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 3160 (Gabriel) – As Amended March 21, 2024

SUBJECT: Insurance, income, and corporation taxes: credits: low-income housing

SUMMARY: Makes an allocation of $500 million to the Low Income Housing Tax Credit (LIHTC) permanent. Specifically, **this bill**: Deletes the limitation that an existing $500 million allocation of LIHTC is subject to the Budget Act or related legislation to allocations for the 2021 through the 2024 calendar years, thereby eliminating this requirement beginning with the 2025 calendar year.

EXISTING LAW:

1) Allocates $70 million on an ongoing basis to the California Tax Credit Allocation Committee (TCAC) for the purposes of administering the LIHTC and adjusts this amount for inflation beginning in the 2002 calendar year, plus any unused amounts for the preceding calendar year and any amount returned in the calendar year. (Revenue and Taxation Code (RTC) Sections 12206, 17058, and 23620.5)

2) Allocates an augmentation of $500 million to the LIHTC, as specified, beginning in the 2020 calendar year, and annually thereafter only if an appropriation is made in the Budget Act. Projects eligible for this augmentation must be federally subsidized. Among other provisions, TCAC is required to develop a scoring system that maximizes the efficient use of public subsidy and benefit created through private activity bonds and LIHTC programs as part of an allocation methodology that emphasizes increased production and cost containment. The factors to consider in making this determination of efficient use include, but are not limited to, the following:

    a) The number and size of units developed, including local incentives provided to increase density;

    b) The proximity to amenities, jobs, and public transportation;

    c) The location of the development; and

    d) The delivery of housing affordable to very low- and extremely low-income households by the development.

3) Requires for the 2024 through 2034 calendar years, the lesser of 5 percent of the $500 million augmentation or $25 million must be set aside for allocation to "farmworker housing" projects, as defined. (R&TC Sections 12206, 17058, and 23620.5)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 3160 supports one of the most critical state funding sources for affordable housing: the state low-income housing tax credit. By planning for

the long-term certainty of the credit, we can ensure developers can depend on this critical funding source when planning for future housing construction. The state low-income housing tax credit will allow for the construction of over 6,000 units of affordable housing each year and generate additional federal, local, and private funding at ratios as great as five to one, making this change an extremely prudent and effective use of the state's financial resources."

Affordable Housing Need: According to the 2022 Statewide Housing Plan, to meet California's unmet housing needs, the state needs an additional 2.5 million housing units, including 1.2 million for lower-income households. Decades of underbuilding have led to a lack of housing overall, particularly housing that is affordable to lower-income households. The state needs an additional 180,000 new units of housing a year to keep up with demand – including about 80,000 units of housing affordable to lower-income households. By contrast, production in the past decade has been under 100,000 units per year – including less than 20,000 units of affordable housing per year.

Furthermore, the state's homelessness crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership Corporation's (CHPC)'s Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 683,000 available and affordable rental units in the state. Over three-quarters of the state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50 percent of their income toward rent each month.

Despite recent investments over the last few years, state and local governments have not significantly invested in affordable housing production in decades, leading to a lack of supply. In addition, local governments have failed to adequately zone or plan for affordable housing for decades. In the last seven years, the state has taken major steps to increase the supply of housing by requiring local governments to plan and zone for 2.5 million new housing units, holding local governments accountable for approving housing, and streamlining both affordable housing and mixed-income housing.

Background on the State LIHTC Program: In 1987, the Legislature authorized a state LIHTC program to augment the federal tax credit program. The amount of state LIHTC that may be annually allocated by TCAC is limited to $70 million, adjusted for inflation. In 2020, the total credit amount available for allocation was about $100 million plus any unused or returned credit allocations from previous years. While the state LIHTC program is patterned after the federal LIHTC program, there are several differences. First, investors may claim the state LIHTC over four years rather than the 10-year federal allocation period. Second, the rates used to determine the total amount of the state tax credit (representing all four years of allocation) are 30% of the eligible basis of a project that is not federally subsidized and 13% of the eligible basis of a project that is federally subsidized, in contrast to 70% and 30% (representing all 10 years of allocation on a present-value basis), respectively, for purposes of the federal LIHTC.

Enhanced State LIHTCs: In 2019, AB 101 (Budget Committee, Chapter 159), was signed into law, providing an additional $500 million in "enhanced" state LIHTCs in 2020 and future years, subject to appropriation. The credits are "enhanced" because they have a higher credit rate, providing more assistance to each development than the original state credits. Over their first four years, the enhanced state Housing Credits have made possible an additional 25,000 homes affordable to low-, very low-, and extremely low-income households. Moreover, these enhanced

state credits allowed California to draw down an additional $5.3 billion in federal 4% Housing Credits and are leveraged overall with other federal, local, and private funds at a ratio of more than five to one. Since their inception, demand for the enhanced state credits has been oversubscribed at least two to one, and as high as three to one. Unlike most tax credits that are permanent or even the film tax credits that are locked in for five years, the additional $500 million in enhanced state credits is subject to budget approval every year. While it has been authorized each year through 2024, the Governor's current proposed budget would eliminate these enhanced state credits for 2025. Because it takes years to bring an affordable housing development to fruition, developers need certainty that funding will remain available.

Leveraging: When the additional $500 million was first made available, the federal tax-exempt bond ceiling of approximately $4 billion had not yet been reached. In 2014, for example, developers only used $80.5 million in annual federal 4% tax credits, significantly less than prior years. This is because there was little supplemental funding from housing bonds or local funding sources available to fill the remaining financing gap. The loss of redevelopment funding and state housing bond funds, which were used in combination with 4% federal credits to achieve higher affordability, had made the 4% federal credits less effective.

Thus, the additional $500 million was targeted to the 4% credit and coupled with private activity bonds (PABs), in part, to encourage developers to fully utilize any remaining PABs that were being left on the table. When the $500 million was made available, there was also a significant uptick in state and local housing construction funding, so 4% credit applications increased rapidly and the bonds became oversubscribed. As a result, the California Debt Limit Allocation Committee (CDLAC) instituted a competitive process for awarding PABs. The Legislature approved another one-time $500 million allocation in the 2021-22 budget, and a third one-time $500 million infusion in the program in 2022-23. The limitation on the 4% credit comes from the bond volume cap, not the credit. Once the cap is met, the number of additional projects (and, to a certain degree, units) that can be approved under the 4% credit substantially tapers off. Federal legislation is pending which would reduce the threshold for PAB financing in 4% LIHTC projects. A reduction in threshold from the current 50% to 25% would free up roughly $93 billion nationally in PAB volume capacity over the next 10 years. Without additional allocation of LIHTC, California will not be in a positon to maximize the PABs.

Arguments in Support: According to the sponsor, the California Housing Partnership, "AB 3160 makes the $500 million in annual enhanced state Housing Credits permanent. Based on past results, we project that these resources each year will create 6,253 additional affordable homes and draw down $1.3 billion in available federal Housing Credits, a massive impact and great return on investment. Moreover, whereas developers plan new developments years in advance, a permanent enhanced state Housing Credit will create the predictability that is so vital to the affordable housing development community."

Arguments in Opposition: None on file.

Related Legislation:

AB 1657 (Wicks) (2023) would authorize the Affordable Housing Bond Act of 2024 to place a $10 billion housing bond on the March 5, 2024 primary ballot to fund production of affordable housing and supportive housing. This bill is in the Senate Appropriations Committee.

Double Referred: This bill was also referred to the Assembly Committee on Revenue and Taxation, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Partnership Corporation (Sponsor)
Abode Communities
Affordable Housing Management Association -Pacific Southwest
Alliant Strategic Development
California Association of Local Housing Finance Agencies
California Community Builders
Corporation for Supportive Housing
CTY Housing, INC.
East Bay Housing Organizations
Housing Authority of the City of Alameda
Housing California
Kingdom Development
Linc Housing
MidPen Housing Corporation
Murow Development Consultants
Nonprofit Housing Association of Northern California
Resources for Community Development
San Francisco Housing Accelerator Fund
San Joaquin Valley Housing Collaborative
Satellite Affordable Housing Associates
Self Help Enterprises
Sisters of St. Joseph of Orange Healthcare Foundation
Southern California Association of Nonprofit Housing
St. Mary's Center
Supportive Housing Alliance
The John Stewart Company
Ventura Social Services Task Force
YM Architects

Opposition

None on file.

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

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 3177 (Wendy Carrillo) – As Introduced February 16, 2024

SUBJECT: Mitigation Fee Act: land dedications: mitigating vehicular traffic impacts

SUMMARY: Prevents local agencies from imposing land dedication requirements on new housing developments in transit priority areas for vehicular traffic purposes. Specifically, **this bill**:

1) Defines "land dedication" as a physical exaction of property for public use without compensation, whether imposed on an ad hoc or legislative basis, that is charged by a local agency to the applicant in connection with a development approval for the purpose of defraying the cost of public facilities related to the new development.

2) Prohibits local agencies from imposing a land dedication requirement on housing developments in Transit Priority Areas (TPAs) for the purpose of mitigating vehicular traffic impacts or achieving an adopted traffic level of service related to vehicular traffic, with the following exceptions:

    a) The housing development has a street frontage of 500 feet or more; or

    b) The local agency makes a finding, specific to the housing development project and supported by a preponderance of the evidence, that the land dedication requirement is necessary to preserve the health, safety, and welfare of the public.

EXISTING LAW:

1) Establishes the Mitigation Fee Act which:

    a) Requires a local agency to do all of the following when establishing, increasing, or imposing a fee on a development project:

        i. Identify the purpose of the fee;

        ii. Identify the use to which the fee is to be put;

        iii. Determine how there is a nexus between the fee's use and the type of development project on which the fee is imposed; and

        iv. Determine how there is a nexus between the need for a public facility and the type of development project on which the fee is imposed. (Government Code (GOV) 66000-66025)

    b) Provides that if a local agency imposes a fee on a housing development to mitigate traffic impacts, and the development is within half a mile barrier-free walk of a transit station, the fee should reflect a lower rate of automobile trips, unless proven at a

public hearing that the housing development would not generate fewer automobile trips than a development further away from transit. (GOV 66005.1)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 3177 promotes efficient land use by placing limits on "Spot Widening," whereby developers give up land and pay for road expansions as a permitting requirement. This practice affects the financial feasibility of housing developments, reducing the number of homes a developer can build and increasing tenants' rents. One project in Los Angeles lost over 6,000 square feet of land to road widening, which amounted to a loss of over 30 dwelling units. There was a delay of almost two years for another project, consisting of permanent supportive housing for the homeless, as the developer sought to waive the road-widening requirement. These additional costs and delays contribute to California's housing shortage and homelessness crisis."

Statewide Housing Needs: According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update,[1] California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.[2]

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle. By contrast, housing production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.[3] As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- 2.1 percent of the very low-income RHNA
- 4.8 percent of the low-income RHNA
- 4.8 percent of the moderate-income RHNA
- 12.7 percent of the above moderate-income RHNA

Cost of Building Housing: It is expensive to build housing in California. The UC Berkeley Terner Center finds that challenging macroeconomic conditions, including inflation and high interest rates, affect the availability and cost of capital, resulting in rising costs for labor and

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[1] California Department of Housing and Community Development, *A Home for Every Californian*: 2022 Statewide Housing Plan. March 2022, https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136
[2] U.S. Department of Housing and Urban Development, Point in Time Counts. https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml

materials.[4] Furthermore, workforce and supply shortages have exacerbated the already high price of construction in California, and economic uncertainty has made equity partners and lenders apprehensive about financing new housing development proposals.[5]

An analysis by the California Housing Partnership compares the cost of market rate development prototypes developed by the Terner Center with the median cost of developing affordable rental homes. In the four regions analyzed, the study found that the cost of developing one unit of affordable housing ranged from approximately $480,000 to $713,000, while the cost of developing one unit of market rate housing in the state ranged from approximately $508,000 to $637,000.[6]

Impact Fees and Exactions – Added Uncertainty and Costs: Development fees serve many purposes and can be broadly divided into two categories: service fees and impact fees. Service fees cover staff hours and overhead, and are used to fund the local agency's role in the development process such as paying for plan reviews, permit approvals, inspections, and any other services related to a project moving through various local departments. Impact fees refer generally to fees that offset the public costs of new infrastructure incurred by the larger community. In the wake of the passage of Proposition 13 in 1978 and the loss of significant property tax revenue, local governments have also turned to development fees as a means to pay for new infrastructure. According to the UC Berkeley Terner Center for Housing Innovation, between 2008 and 2015, California fees rose 2.5%, while the national average decreased by 1.2%.[7] Development fees can comprise 17% of the total development costs of new housing, and in California in 2015, impact fees were nearly three times the national average.[8]

The Mitigation Fee Act governs the imposition, collection, and use of impact fees collected by local governments when reviewing and approving development proposals.

Key aspects of the Mitigation Fee Act include:

1. **Nexus Requirement**: The Act requires a clear "nexus" or connection between the fee charged and the impact created by the development. This means that the fees collected must be used to address the specific impacts that the new development is expected to have on public facilities and services.

2. **Proportionality**: The fees charged must be proportional to the impact of the development.

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[4] David Garcia, Ian Carlton, Lacy Patterson, and Jacob Strawn, *Making It Pencil: The Math Behind Housing Development (2023 Update)*, Terner Center for Housing Innovation, December 2023, https://ternercenter.berkeley.edu/research-and-policy/making-it-pencil-2023/
[5] IBID.
[6] Mark Stivers, *Affordable Housing Compares Favorably to Market-Rate Housing From a Cost Perspective*, California Housing Partnership, January 2024: https://chpc.net/affordable-housing-compares-favorably-to-market-rate-housing-from-a-cost-perspective/#:~:text=It%20turns%20out%20that%20costs,market%2Drate%20developments%20do%20not.
[7] Sarah Mawhorter, David Garcia and Hayley Raetz, *It All Adds Up: The Cost of Housing Development Fees in Seven California Cities*, Terner Center for Housing Innovation, March 2018, https://ternercenter.berkeley.edu/research-and-policy/it-all-adds-up-development-fees
[8] IBID.

3. **Accountability**: Local governments are required to establish separate accounts for the fees collected and to use the funds solely for the intended purposes. They must also provide annual reports on the status of the fees, including the balance and how the funds have been used.

4. **Timing of Fee Payment**: The Act specifies when fees can be collected, generally at the time of final inspection or when certificate of occupancy is issued, with some exceptions.

5. **Refunds**: If the fees collected are not used within five years, and specific findings are not made, the Act provides for the refund of the fees.

Existing law limits the fees local agencies can impose on housing developments within 1/2 mile of a transit station, which includes a rail or light-rail station, ferry terminal, bus hub, or bus transfer station, but excludes other major bus stops, as well as planned transit stops. To enhance traffic-impact mitigation strategies, it is important to consider transit priority areas, which are designated zones within 1/2 mile of a major transit stop.

Spot Widening: In some urban areas, such as the City of Los Angeles, the practice of "Spot Widening" along roadways adjacent to new developments has become a requirement imposed by cities on developers. This process involves the widening of a portion of the roadway to accommodate increased vehicular traffic that might result from the new development. According to the California Department of Housing and Community Development (HCD), this sort of land dedication may affect the cost and feasibility of developing housing as well as its affordability.[9] A 2016 research study published in the Journal of Transport and Land Use found that road widening requirements in Los Angeles can cost developers over $10,000 per unit, resulting in up to hundreds of thousands of dollars being added to projects subjected to these requirements in certain instances.[10] Such additional costs often lead to higher rent prices to make up for the loss. In addition to the monetary costs, developers also lose valuable land they could have used for additional housing units.

Shifting land from housing to roads on a per project basis may not achieve any mitigation because the widening is limited to the roadway adjacent to the project, leading to road configurations that essentially zigzag. In instances where an entire block of the road is widened due to a large scale development, the growing body of evidence on the effects of road widening makes clear that this practice induces driving and worsens congestion. Therefore, placing “spot widening” requirements on a developer may result in more driving, rather than mitigating congestion.

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[9] https://www.hcd.ca.gov/planning-and-community-development/housing-elements/building-blocks/fees-and-exactions

[10] Michael Manville, *Automatic street widening: Evidence from a highway dedication law*. Journal of Transport and Land Use, 9(1). 2016. https://doi.org/10.5198/jtlu.2016.834

The examples cited in this report include:

- One $450,000 improvement that caused a developer to reduce their development from 10 units to 9 units, put otherwise, a cost of $50,000 per unit.
- A 27 unit development paying $300,000 ($11,100 per unit)

Transit Priority Areas: Transit Priority Areas (TPAs) are designated regions within a half-mile radius of an existing or planned major transit stop. These areas are identified as part of the state's strategy to promote sustainable development and reduce greenhouse gas emissions. The rationale behind encouraging car-free or low-car developments in TPAs is to leverage the proximity to public transit, thereby reducing the reliance on private vehicles for daily commutes. This approach aligns with California's broader environmental and urban planning goals, aiming to create more walkable, bike-friendly, and transit-oriented communities. By fostering developments in TPAs that minimize automobile dependency, the state seeks to alleviate traffic congestion, improve air quality, and enhance the overall quality of life for residents.

The state seeks to incentivize and prioritize new housing development in climate-smart places,[11] accompanied by the policy goals of lowering the cost of housing and reducing greenhouse gas emissions. As such, limiting road widening for vehicular traffic via land dedication, and limiting the fees that a local jurisdiction can charge for vehicular traffic mitigation, in TPAs as proposed in this bill is well aligned with these existing goals and priorities. Nothing in this bill would prevent local governments from imposing other types of land dedication requirements in TPAs, or other requirements to construct public improvements, including, but not limited, to sidewalk and sewer improvements. Furthermore, a local government may still impose a land dedication requirement on housing development for street widening if the local agency makes specific findings that the dedication is necessary to preserve the health, safety, and welfare of the public, providing the local government with flexibility.

Committee amendments: Staff recommends the bill be amended to clearly state that local governments may still impose other land dedication requirements, or requirements to construct public improvements, in TPAs so long as the requirement is not for the purpose of mitigating vehicular traffic impacts or achieving an adopted traffic level of service related to vehicular traffic. For the purpose of timing, the amendments will be taken in the Assembly Local Government Committee, should this bill pass out of this Committee.

66005.1:

(c)(2) Notwithstanding paragraph (1), a local agency may impose a land dedication requirement on a housing development if both of the following conditions are met:

(A) The housing development is not located in a transit priority area.

(B) The housing development has a street frontage of 500 feet or more.

(3) Notwithstanding paragraph (1), A local government may impose a land dedication requirement on a housing development for the purpose of street widening, if the local agency makes a finding, specific to the housing development project and supported by a preponderance of the evidence, that the land dedication requirement is necessary to preserve the health, safety, and welfare of the public.

(4) Nothing in this subdivision shall prohibit any other lawful land dedication requirement or requirement to construct public improvements, including, but not limited to, sidewalk and sewer improvements.

[11] 2022 Statewide Housing Plan.

Arguments in Support: According to Streets for All and The Greenlining Institute, "the requirement for homebuilders to finance roadway widening and surrender land as a condition for housing project approvals is fundamentally misaligned with principles of environmental sustainability, equity, and justice. This approach not only fosters a dependency on automobiles, leading to higher Vehicle Miles Traveled (VMT) and associated emissions, but also exacerbates the urban heat island effect, a critical environmental concern. In the rare instance where a significant length of the road is widened, the growing body of evidence on the effects of road widening makes it clear that this practice induces more driving and worsens congestion in the long run. Placing the burden of potential mitigations on a developer leads to poor road design and induces more driving instead of easing congestion. On the housing front, this city policy has cost or delayed thousands of units of deed-restricted and homeless housing which is desperately needed in our communities."

Arguments in Opposition: None on file.

Related Legislation:

AB 2553 (Friedman) would amend the Mitigation Fee Act to limit fees to mitigate traffic impacts within one-half mile of a major transit stop. This bill was heard in the Assembly Committee on Local Government on April 10, where it was passed out 9-0.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Streets for All (Sponsor)
Abundant Housing LA
Active San Gabriel Valley
All Voting Members of The North Westwood Neighborhood Council
Bike East Bay
Bike LA
California Bicycle Coalition
California Environmental Voters
California Housing Partnership Corporation
California YIMBY
Car-lite Long Beach
Conor Lynch Foundation
Council of Infill Builders
East Bay for Everyone
Everybody's Long Beach
Housing Action Coalition
Long Beach Bike Co-op
Los Angeles Walks
Natural Resources Defense Council
Pedal Movement
People for Housing – Orange County
Safe Routes Partnership

Seamless Bay Area
Socal Families for Safe Streets
The Greenlining Institute
Transbay Coalition
Transform
YIMBY Action
Youth Climate Strike Los Angeles

Opposition

None on file.

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085