

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1585 (Bloom) – As Introduced February 17, 2017

SUBJECT: Planning and zoning: affordable housing: single application

SUMMARY: Establishes a single application process for housing developments that include affordable housing units and creates a state appeals body if those developments are denied.

Specifically, **this bill:**

- 1) Finds and declares that the Legislature has provided reforms and incentives to facilitate and expedite the construction of affordable housing through the following provisions:
 - a) Housing element law;
 - b) Extension for the statute of limitations in actions challenging housing elements brought in support of affordable housing;
 - c) Restrictions on disapproving housing developments;
 - d) Priority for affordable housing in the allocation of water and sewer hookups;
 - e) Least cost zoning law;
 - f) Density bonus law;
 - g) Accessory dwelling units;
 - h) By right housing in which certain multifamily housing are designated a use permit;
 - i) No-net-loss in zoning density bonus limiting down zonings and density reductions;
 - j) Requiring people who sue to halt affordable housing to pay attorney fees;
 - k) Reduced time for action on affordable housing applications under the approval of the development process;
 - l) Limiting moratoriums on multifamily housing;
 - m) Prohibiting discrimination against affordable housing;
 - n) California Fair Employment and Housing Act; and
 - o) Community Redevelopment Law.
- 2) Defines "affected local agency" as a city, county, or city and county, including a charter city, or charter city and county within the jurisdiction of the proposed affordable housing units or housing project subject to a comprehensive permit issued by an affordable housing zoning board.

- 3) Defines "affordable housing unit" to mean a single-family or multifamily residential development with an affordable housing cost or an affordable rent for very low, low-, and moderate-income households.
- 4) Defines "affordable housing zoning board" as the entity established within the city, county or city and county authorized to issue a comprehensive permit.
- 5) Defines "applicant" to mean either of the following:
 - a) A public agency or nonprofit organization proposing to build affordable housing units that will receive full or partial funding through a state or federal program; or
 - b) A developer proposing to build a housing project.
- 6) Defines "comprehensive permit" to mean a conditional use or other discretionary permit issued by an affordable housing zoning board that allows for the development of affordable housing units by a public agency, nonprofit organization or a housing project by a developer.
- 7) Defines "consistent with local needs" to mean reasonable with respect to the determination of the regional housing needs, the number of very low, low-, and moderate-income households in the city, county, or city and county and the health and safety of the residents of the city, county, or city and county.
- 8) Defines "housing appeals committee" to mean the committee established within the Department of Housing and Community Development (HCD) for the purpose of hearing appeals from a decision of the affordable housing zoning board with respect to an application for a comprehensive permit.
- 9) Defines "housing project" to mean a residential development of which 5% of the units are affordable to persons making 60% or less of the area median income (AMI) and 10% of the units are affordable to person making 80% or less of the AMI. Requires these units to be subject to recorded affordability restrictions for 55 years.
- 10) Defines "infeasible for the development of the affordable housing units or housing project" to mean that it is impossible for a public agency or nonprofit organization to build or operate the affordable housing units, or for a developer to build or operate the housing project without substantially changing the cost of the housing or unit size.
- 11) Establishes within each city, county, and city and county in the state an affordable housing zoning board and provides that the planning commission of the city, county, or city and county will serve as members of the board.
- 12) Provides that the affordable housing zoning board is subject to the Ralph M. Brown Act and the California Public Records Act.
- 13) Provide that the affordable housing zoning board is deemed the lead agency for the purposes of the California Environmental Quality Act (CEQA) with respect to the issuance of a comprehensive permit.

- 14) Provides that an applicant may submit a single application for a comprehensive permit to the affordable housing zoning board and the board shall transmit a copy of the application to each affected local agency.
- 15) Requires the affordable housing zoning board to conduct a public hearing on the application for a comprehensive permit within 30 days of receiving the application.
- 16) Provides that the applicant, representatives of any affected local agencies, and any persons who will be substantially affected by the issuance of the comprehensive permit shall have the right to appear at a hearing.
- 17) Requires a public hearing to be completed in no more than 180 days.
- 18) Requires the affordable housing zoning board by majority vote to approve, approve with conditions, or deny an application for a comprehensive permit within 40 days of the conclusion of the public hearing.
- 19) Requires the affordable housing zoning board to consider the following in making a decision on the application for a comprehensive permit:
 - a) The general plan and local zoning ordinances of the affected local agency that apply to the proposed housing units or housing project;
 - b) The share of the regional housing needs in which the applicant proposes to build affordable housing units or housing project;
 - c) Whether or not an applicant has certified that the project will be subject to specified wage standards; and
 - d) Any documents or other evidence presented at the public hearings by the applicant, the representatives of the affected agencies, or other persons who would be substantially affected by the issuance of the comprehensive permit.
 - e) Recommendations of experts or consultants retained by the board.
- 20) Provides that if the affordable housing zoning board approves or approves with conditions an application for a comprehensive permit, the board shall issue the permit to the applicant.
- 21) Provides that a comprehensive permit will have the same force and effect as a conditional use or other discretionary permit issued by the affected local agency.
- 22) Provides that if the affordable housing zoning board does not approve, approve with conditions, or deny an application within 40 days the application will be deemed approved.
- 23) Provides that the affordable housing zoning board shall not nullify a provision of the general plan or zoning ordinance of an affected local agency as they apply the proposed affordable housing units or housing project except that the board may grant a density bonus to an applicant.
- 24) Requires HCD to establish a housing appeals committee (committee).

- 25) Requires the Director of HCD to annually appoint members of the committee and designate a chair.
- 26) Provides that membership of the committee will include the following:
- a) Three representatives of the HCD;
 - b) Four public members who will be appointed so as to promote geographic diversity and balance urban and rural interests and who are representatives of or have experience in the following areas:
 - c) Private sector lending institutions;
 - d) For-profit housing development;
 - e) Non-profit housing development;
 - f) Public sector housing development;
 - g) Local or regional planning;
 - h) Architecture;
 - i) Local community development;
 - j) Local government;
 - k) Housing consultation; and
 - l) Academia as related to housing issues.
- 27) Provides that members of the committee serve without compensation and shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties.
- 28) Requires the committee to hear appeals at a public hearing held at least quarterly in accordance with the rules and regulations adopted by HCD.
- 29) Requires HCD to provide space and clerical or other assistance as needed.
- 30) Provides that if the affordable housing zoning board denies an application for a comprehensive permit or grants it with conditions that render it infeasible for the development of the affordable housing units or housing project the applicant may appeal the decision to the committee by submitting a statement of appeal stating the grounds for the appeal and the relief sought to the committee.
- 31) Requires the committee to transmit a notice of the appeal to the affordable housing zoning board and any affected local agency.
- 32) Requires the affordable housing zoning board to transmit a copy of its final decision to the committee for review no later than 10 days following receipt of the notice of appeal.

- 33) Provides that the committee shall not have jurisdiction over appeals if the affected local agency has permitted construction of an unspecified number of its allocation of very low-income, low-income, and moderate-income households in the previous regional housing needs allocation plan cycle.
- 34) Requires the committee to conduct a hearing on the appeal within 30 days of receipt of the statement of appeal.
- 35) Requires the committee to conduct a hearing on the appeal within 30 days of receipt of the statement of appeal.
- 36) Provides that the review of the committee shall be limited to the following:
- a) If the affordable housing zoning board denied the application for a comprehensive permit, whether or not the denial was reasonable and consistent with local needs;
 - i. Provides that if the committee determines that a denial of the application for a comprehensive permit is both unreasonable and not consistent with local needs then the committee may reverse the decision of the affordable housing zoning board and remand the matter with instructions that the application be approved consistent with the decision of the committee.
 - b) If the affordable housing zoning board approved the application with conditions, whether or not the conditions render it infeasible for the development of the affordable housing units or housing project consistent with local needs.
 - i. Provides that the committee shall modify the permit so that it no longer renders the infeasible the development of the affordable housing units or housing project and the conditions are consistent with local needs and remand the matter to the affordable housing zoning board with instructions to issue the permit as modified.
 - c) Provides that the committee shall affirm the decision of the affordable housing zoning board if it finds that the decision was consistent with local needs.
- 37) Provides that once the committee has issued its final decision, the affordable housing zoning board shall not have any discretion to modify the permit other than as directed in the decision of the committee and implementation of the decision of the committee shall be deemed a ministerial duty of the board.
- 38) Provides that a decision of the committee modifying or reversing a decision of the affordable housing zoning board may be reviewed in the superior court for the county in which the affordable housing units or housing project are proposed to be built.
- 39) Require that an applicant for a comprehensive permit for a project to do the following, as applicable:
- a) Certify to the approving authority that either of the following is true, as applicable:
 - i. The entirety of the project is a public work for purposes of state prevailing wage laws; or,

- ii. If the project is not in its entirety a public work, that all construction workers employed in the execution of the project will be paid at least the general prevailing rate of per diem wages for the type of work and geography, as determined by the Director of Industrial Relations, as specified. If the approving authority approves the application, then for those portions of the project that are a public work, all of the following shall apply:
 - a. The applicant shall include prevailing wage requirements in all contracts for the performance of the work;
 - b. Contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate or per diem wages;
 - c. The obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment, as specified, except as provided for in (d) below;
 - d. If all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure, then (c) above does not apply; and,
 - e. The requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise proved in a bona fide collective bargaining agreement to cover the worker, as specified.
- b) For projects with a cost exceeding an unspecified dollar amount, certify to the approving authority that a skilled and trained workforce, as specified, will be used to complete the project. If the approving authority approves the application, the following shall apply:
 - i. The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the project;
 - ii. Every contractor and subcontractor shall use a skilled and trained workforce to complete the project;
 - iii. The applicant shall provide to the approving authority, on a monthly basis while the project or contract is being performed, a report demonstrating compliance, as specified, and except as provided in 4), below. States that a monthly report shall be a public record under the California Public Records Act and shall be open to public inspection. Failure to provide a monthly report demonstrating compliance shall be subject to a civil penalty of \$10,000 per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of \$200 per day

for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner, as specified;

- iv. Specifies that iii), above, shall not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement (PLA) that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure; and,
- v. Provides for relocation assistance for persons and families displaced from their residences due to development within the district.

40) Declares that encouraging and streamlining the development of affordable housing throughout the state is a matter of vital statewide concern and that the law created by this bill applies to all cities and counties including charter cities.

41) Provides that if the Commission of State Mandates determines that this act contains costs mandated by the state, local agencies and school districts shall be reimbursed.

EXISTING LAW:

- 1) The Permit Streamlining Act requires no later than 30 calendar days after a public agency receives an application for a development, the agency to determine in writing whether the application is complete and immediately transmit the determination to the applicant. Provides that if the application is not deemed approved within 30 days after receipt of the application the application is deemed approved. Provides that upon receipt of any resubmittal of an application a new 30 day period begins during which the public agency must determine the completeness of the application. (Government Code Section 65943)
- 2) The Housing Accountability Act provides that if a locality denies approval or imposes restrictions, design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete, that have a substantial adverse effect on the viability or affordability of housing development for very low-, low- or moderate-income households, and the denial of that development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the locality to show that its decision is consistent with its findings disapproving the development. (Government Code Section 65589.5)

FISCAL EFFECT: Unknown.

COMMENTS:

Background: According to a report by the McKinsey Global Institute, *A Tool Kit to Close California's Housing Gap: 3.5 Million Homes By 2025*, the state now has a \$50 to \$60 billion annual affordability gap. Virtually none of California's low income and very-low income households can afford the cost of housing. California ranks forty-ninth in the nation for housing units per capita. Benchmarked against other states on a housing unit per capita, California is short about two million units.

California has reduced its funding for the creation of affordable homes by 69%, from approximately \$1.7 billion a year to nearly nothing. According to the California Housing Consortium, California has a shortfall of 1.7 million affordable units for extremely low and very-low income renter households. The Public Policy Institute of California reports that 32% of mortgaged homeowners and 47% of renters spend more than one-third of their total household income on housing and that while California has 12% of the nation's population, it has 20% of the nation's homeless.

In its draft assessment, California's Housing Future: Challenges and Opportunities, HCD lists barriers and constraints to housing development in the permitting phase including: multiple levels of discretionary review at the local level, community resistance to new affordable housing, and environmental permit process reviews which can be used to stop, or limited housing development for various reasons. In addition, during California's most recent housing element cycle not one region built enough housing to meet its regional demand. The two most populous regions in the state, the Southern California Association of Governments region produced 46% and the Association of Bay Area Governments produced 53% of their respective regional needs. Statewide 47% of the housing required to meet projected need was constructed during this time-period.

Massachusetts Chapter 40B: In 1969, Massachusetts adopted the Massachusetts Comprehensive Permit Act or Chapter 40B to respond to exclusionary zoning practice that prevent low and moderate income housing from being constructed. Chapter 40B entitles developers to an expedited approval process for projects that contain housing units affordable to households making less than 80% of the AMI as well as a state appeals process in the event that a local zoning board denies an application.

Permit Streamlining Act and CEQA: The California Permit Streamlining Act sets a timeline for a local government to respond to a permit request. The Act requires the planning staff of a local agency to determine within 30 days of receiving an application whether or not the request is complete. If a decision is not made within this time, the application will be "deemed complete" and the agency must approve or deny the project on the basis of submitted information alone. If the application is not complete, the agency must detail the application's deficiencies. Applicants may appeal an incomplete determination to the planning commission, governing body, or both, and the agency must issue a final decision on the appeal within 60 days. Once the application is determined to be complete, the agency has an additional 30 days to determine what level of environmental review is required under CEQA. The agency may determine whether the project is exempt, requires either a negative declaration, or requires a full environmental impact report (EIR). CEQA has its own timelines for making environmental determinations. For example, local agencies have a year to complete and certify an EIR. Unlike the Permit Streamlining Act, however, these CEQA timelines are "directory," not "mandatory," meaning that a project is not "deemed approved" if the CEQA timeline is not met. Instead, the applicant's remedy is to sue to enforce the CEQA time limits.

AB 1585 does not address how CEQA would be treated within the single application process. A limited number of developments could qualify for an existing CEQA exemption for infill sites or may be subject to ministerial approval as part of a rezoning program in a local governments housing element. To expedite this limited group of developments, the process created by this bill would need to include an exemption or expedited review under CEQA.

Purpose of this bill: This bill would establish a single permit application process for housing developments that receive state, federal or local funding for affordable housing or housing developments that include at least 15% affordable units (5% for individuals that make 60% of the AMI and 10% for those that make 80% of the AMI). A permit would be reviewed and processed by a local affordable housing zoning board (board) made up of the members of the planning commission. The board would be required to conduct a public hearing on a permit application within 30 days of receipt of the application. The developer, any local agencies affected by the permit and any other person who would be substantially affected by the permit would have the right to appear at the hearing. The public hearing would have to be completed within 180 days and the board would be required to approve, deny, or approve the permit with conditions by majority vote within 40 days after the public hearing is concluded. As a result the timeline for action on a permit would be at the most 250 days or 8 months. The board cannot approve a development that nullifies the general plan or zoning ordinances of a local government but may grant a density bonus to the development.

If a development is denied by the board, the developer has the right to appeal to a state housing appeals committee housed at the HCD made up of representatives of for- and non- profit housing developers, local and regional planning, local government, lenders and others. The committee would have the authority to review the denial and modify, affirm, or reverse the decision of the board. In determining how to act, the committee is limited to considering whether or not the denial was reasonable and consistent with local need. Consistent with local needs means reasonable with respect to the regional housing needs and the health and safety of the residents of the city, county or city and county.

Exemption from the state appeals committee: The bill would exempt cities that have permitted construction of a percentage of housing affordable to very low-, low- and moderate- income individuals from the appeals body. The percentage of units that a jurisdiction would be required to permit to qualify for the exemption has been left blank. Each local government is given a RNHA number that they must plan for based on projected population growth. Local governments are required to report to HCD each year on changes in their RNHA, however charter cities are exempt and compliance is mixed, leaving the state with a lack of accurate information on whether cities are meeting their RNHA goals. Some Councils of Governments do their own analysis of whether local jurisdictions are meeting their RNHA and generally speaking local governments meet or exceed their production of market rate housing, have some production at the lower income level and little production of moderate income housing.

Arguments in opposition: The League of California Cities, Urban Counties of California, Rural Counties Representatives of California is opposed to AB 1585. They are concerned that the bill eliminates local control by usurping the current role of the local planning committees and the Board of Supervisors in approving housing developments and the ability to appeal to a state committee would result in delays for projects or approve projects that have significant community concerns.

The American Planning Association raises concerns with how the state appeals committee would work with existing remedies available to developers when a project is denied, including the Housing Accountability Act. Under the Housing Accountability Act, if a court finds that the local agency disapproved, or conditioned approval in a manner that renders infeasible the project or emergency shelter without making the required findings or without making sufficient finding, the Act requires the court to issues an order or judgement compelling compliance with its

provisions within 60 days, including and order that the local agency take action on the development project or emergency shelter.

Staff comments: Several issues have been raised regarding this proposal that could be addressed to make it more useful. The benefit of the streamlined permitting process will be limited without some expansion of existing CEQA exemptions or streamlining for projects with some level of CEQA review. To address this issue, the Committee may wish to consider providing a more streamlined approval process for smaller sized projects that have high levels affordable units for low- and very- low income residents, that have had some type of CEQA review, through for example the housing element process.

Concerns have been raised with how the state appeals committee would interact with the Housing Accountability Act. Although developers have the option to sue under the Housing Accountability Act they may not be inclined to do so because they want to work with local governments on future projects. The experience in Massachusetts showed that just the existence of a state appeals committee resulted in higher approvals of developments. One option would be to only allow developers to pursue one remedy -- the Housing Accountability Act or the state appeals committee.

Double referral: If AB 1585 passes out of this committee, the bill will be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

None on File

Opposition

American Planning Association, California Chapter (unless amended)
League of California Cities
Rural County Representatives of California
Urban Counties of California

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