Date of Hearing: August 27, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
SB 765 (Wiener) – As Amended August 27, 2018

SENATE VOTE: Not relevant

SUBJECT: Planning and zoning: streamlined approval process

SUMMARY: Makes various changes to SB 35 (Wiener) Chapter 366, Statutes of 2017, which created a streamlined, ministerial approval process for housing developments that meet specified standards and amends the Shelter Crisis Act. Specifically, **this bill**:

1) Provides the California Environmental Quality Act (CEQA) does not apply to actions taken by a state agency or local government to lease, convey, or encumber land owned by the local government or to facilitate the lease conveyance or encumbrance of land owned by the local government, to a development that received streamlined approval that is used for housing for very low, low, or moderate income households.

2) Provides that application for a development that is subject to SB 35 is not a "project" as defined in CEQA.

3) Clarifies that a development proponent must record an affordability restriction or covenant restricting units that are required to receive streamlining, at affordable housing costs or rents for person and families of lower income.

4) Clarifies that the Department of Housing and Community Development (HCD) shall determine if a jurisdiction is subject to streamlining based on the last annual progress report (APR) that the jurisdiction submitted.

5) Clarifies that that the determination of whether or not a jurisdiction is subject to streamlining is based on its issuance of building permits for both very-low income and low-income households by income category.

6) Provides that if a development qualifies for streamlining a local government may only apply "objective subdivision standards" to the development in place at the time the application is submitted. States that this provision is declaratory of existing law.

7) Provides that if a development qualifies for a Subdivision Map Act (SMA) under SB 35 and the development is consistent with all objective subdivision standards in the local subdivision ordinance, then the application for a subdivision is exempt from the requirements of CEQA.

8) Includes intent language that states that it is the policy of the state that SB 35 be interpreted and implemented in a manner to afford the fullest possible weight to the interest, approval, and provision of increased housing supply.

9) Clarifies that parking standards imposed on developments that qualify for streamlining are for automobiles.

10) Provides that for the cities of Berkeley, Emeryville, Los Angeles, Oakland or San Diego, and the County of Santa Clara, or the City and County of San Francisco, when one of those jurisdiction declares a shelter crisis pursuant Government Code Section 68698.4, the CEQA does not apply to actions taken by a state agency, or a city, county to lease, convey, or encumber land owned by the local government or to provide financial assistance to a homeless shelter constructed or allowed under the Shelter Crisis Act.

EXISTING LAW:

1) Requires the following additional information to be included in the annual report provided by the planning agency after adoption of the general plan to the legislative body, the Office of Planning and Research (OPR), and the Department of Housing and Community Development (HCD) 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, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing, including both rental housing and housing designated for home ownership, satisfies.

2) Allows a development proponent to submit an application for a development that is subject to the streamlined, ministerial approval process pursuant to 4) below, and not subject to a conditional use permit if the development contains two or more residential units and satisfies all of the following objective planning standards:

    a) The development is located on a site that satisfies all of the following:

        i) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel of parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the U.S. Census Bureau;

        ii) A site in which at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses;

        iii) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage designated for residential use; and

        iv) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for 55 years for units that are rented or 45 years for units that are owned.

    b) The development satisfies both of the following:

        i) Is located in a locality that HCD has determined, based on the last production report submitted by the locality to HCD, is subject on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. Specifies that a locality shall remain eligible until HCD's determination for the next reporting period.

Provides that a locality is subject to this if it has not submitted an annual housing element report to HCD for at least two consecutive years before the development submitted an application for approval; and

ii) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on either one of the following:

(1) The locality did not submit its latest production report to HCD by the time period required, or that report reflects that there were fewer units of above moderate-income housing approved than were required for the regional housing needs assessment cycle for that year. Requires, if the project contains more than 10 units of housing, the project seeking approval to dedicate a minimum of 10% of the total number of units to housing affordable to households making below 80% of the area median income, or higher as determined by a local ordinance;

(2) The locality did not submit its latest production report to HCD by the time period required, or that report reflects that there were fewer units of housing affordable to households making below 80% of the area median income that were issued building permits than were required for the regional housing needs assessment cycle for that year, and the project seeking approval dedicates 50% of the total number of units to housing affordable to households making below 80% of the area median income, or higher as determined by a local ordinance; or,

(3) The locality did not submit its latest production report to HCD by the time period required, or if the production report reflects that there were fewer units of housing affordable to any income level described in clause (1) or (2) above, that were issued building permits than were required for the regional housing needs assessment cycle for that reporting period, the project seeking approval may choose between utilizing clause (1) or (2), above.

c) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law, is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government.

d) The development is not located on a site that is any of the following:

i) A coastal zone;

ii) Either prime farmland or farmland of statewide importance or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction;

iii) Wetlands;

iv) Within a very high fire hazard severity zone or within a high or very high fire hazard severity zone;

v) A hazardous waste site, unless otherwise specified;

vi) Within a delineated earthquake fault zone, unless otherwise specified;

vii) Within a flood plain, unless otherwise specified;

viii) Within a floodway, unless otherwise specified;

ix) Lands identified for conservation in an adopted natural community conservation plan;

x) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies;

xi) Lands under conservation easement.

e) The development proponent has done both of the following, as applicable:

i) Certified to the locality that either of the following is true:

(1) The entirety of the development is a public work or,

(2) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as specified, except that apprentices registered in programs approved by the chief of the division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

ii) For specified developments, a skilled and trained workforce shall be used to complete the development.

3) Specifies, if a local government determines that a development submitted pursuant to the bill's provisions is in conflict with any of the objective planning standards listed in 2) above, that it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:

a) Within 60 days of submittal of the development to the local government if the development contains 150 or fewer housing units; or,

b) Within 90 days of submittal of the development to the local government if the development contains more than 150 housing units.

4) Provides that the development shall be deemed to satisfy the objective planning standards listed in 3) above, if the local government fails to provide the required documentation pursuant to 3) above.

5) Provides that any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. Requires that design review or public oversight to 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. Provides that design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

   a) Within 90 days of submittal of the development to the local government if the development contains 150 or fewer housing units; or,

   b) Within 180 days of submittal of the development to the local government if the development contains more than 150 housing units.

6) Prohibits a local government, whether or not it has adopted an ordinance governing parking requirements in multifamily developments, from imposing parking standards for a streamlined development that was approved in any of the following instances:

   a) The development is located within one-half mile of public transit;

   b) The development is located within an architecturally and historically significant historic district;

   c) When on-street parking permits are required but not offered to the occupants of the development; or,

   d) When there is a car share vehicle located within one block of the development.

7) Specifies that this bill shall remain in effect only until January 1, 2026, and as of that date is repealed.

8) Finds and declares that ensuring access to affordable housing is a matter of statewide concern, and not a municipal affair, and therefore is applicable to a charter city, charter county, and a charter city and county.

1) Provides that upon a declaration of a shelter crisis by the City of Berkeley, Emeryville, Los Angeles, Oakland, or San Diego, the County of Santa Clara, or the City and County of San Francisco, the following shall apply during the shelter crisis:

   a) Emergency housing may include homeless shelters for the homeless located or constructed on any land owned or leased by the locality, including land acquired with low- and moderate-income housing funds.

   b) The locality, in lieu of compliance with local building approval procedures or state housing, health, habitability, planning and zoning, or safety standards, procedures, and

laws, may adopt by ordinance reasonable local standards and procedures for the design, site development, and operation of homeless shelters and the structures and facilities therein, to the extent that it is determined at the time of adoption that strict compliance with state and local standards or laws in existence at the time of that adoption would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis.

c) Requires the Department of Housing and Community Development (HCD) to review and approve the draft ordinance to ensure it addresses minimum health and safety standards. These findings shall be provided to the Senate Transportation and Housing Committee and the Assembly Housing and Community Development Committee within 30 days of receiving the draft ordinance.

d) Suspends, during the shelter crisis, any housing, health, habitability, planning and zoning, or safety standards, procedures, or laws for homeless shelters, provided that the locality has adopted health and safety standards and procedures for homeless shelters consistent with ensuring minimal public health and safety and those standards are complied with.

e) During the shelter crisis, the local and state law requirements for homeless shelters to be consistent with the local land use plans, including the general plan, shall be suspended.

f) Suspends landlord tenant laws providing a cause of action for habitability or tenantability, provided that the locality has adopted health and safety standards for homeless shelters and those standards are complied with.

g) Exempts homeless shelters constructed or allowed under this chapter from the Special Occupancy Parks Act, the Mobilehome Parks Act, and the Mobilehome Residency Law.

2) Requires a locality, on or before January 1, 2019, and annually thereafter until January 1, 2021, if a shelter crisis has been declared, to report all of the following data to the Senate Committee on Transportation and Housing and the Assembly Committee on Housing and Community Development:

a) The total number of residents in homeless shelters within the locality;

b) The total number of residents who have moved from a homeless shelter into permanent supportive housing within the locality;

c) The estimated number of permanent supportive housing units;

d) The number of residents who have exited the system and are no longer in need of a homeless shelter or permanent supportive housing within the locality;

e) The number of new homeless shelters built pursuant to this section within the locality; and

f) New actions the locality is taking under the declared shelter crisis to better serve the homeless population and to reduce the number of people experiencing homelessness.

3) Provides that this section applies only to a public facility or homeless shelters reserved entirely for the homeless.

4) Requires, on or before July 1, 2019, the locality to develop a plan to address the shelter crisis, including, but not limited to, the development of homeless shelters and permanent supportive housing, as well as onsite supportive services. The locality shall make the plan publicly available.

5) Defines "homeless shelter" as a facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless that is not in existence after the declared shelter crisis. A temporary homeless shelter community may include supportive and self-sufficiency development services.

6) Defines "permanent supportive housing" as housing for people who are homeless, with no limit on length of stay, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

7) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of the California Constitution Section 16 of Article IV because of the unique need to address the problem of homelessness in the Cities of Berkeley, Emeryville, Los Angeles, Oakland, and San Diego, the County of Santa Clara, and the City and County of San Francisco.

FISCAL EFFECT: Unknown.

COMMENTS:

Background: In 2017, SB 35 (Wiener) created a streamlined approval process for infill projects with two or more residential units in localities that have failed to produce sufficient housing to meet their RHNA numbers. The streamlined approval process requires some level of affordable housing to be included in the housing development. To receive the streamlined process for housing developments, the developer must demonstrate that the development meets a number of requirements. Localities must provide written documentation to the developer if there is a failure to meet the specifications for streamlined approval, within specified periods of time. If the locality does not meet those deadlines, the development shall be deemed to satisfy the requirements for streamlined approval.

Existing law requires HCD to determine when a locality is subject to the streamlining and ministerial approval process in SB 35 (Wiener) based on the number of units issued building permits as reported in the annual production report that local governments submit each year as part of housing elements. Streamlining can be turned on at the beginning of the term of housing element (generally eight years but in some cases five) and turned off half way through if a local government is permitting enough units to meet a proportional share of the RNHA at all income levels (low, moderate, and above moderate income). If a local government is not permitting enough units to meet its above moderate and its lower income RHNA than a development must dedicate 10% of the units to lower income in the development to receive streamlined, ministerial approval. If the jurisdiction is permitting its above moderate income and not the lower income RHNA than developments must dedicate 50% of the units for lower income to have access to

streamlining. Developers have submitted applicators for SB 35 streamlining in the following cities: Cupertino, Berkeley, and San Francisco

When this bill was heard in this committee, the author agreed to remove several provisions of the bill to allow for additional discussion. After discussion with various stakeholders, the bill has been amended to include the following changes:

- To qualify for SB 35 streamlining, a developer is required to dedicate a percentage of units for lower income households, either 10% or 50%. The amendments clarify that a developer is required to record affordability covenants for 55-years for rental units and 45-years for ownership units included in the development.

- HCD determines whether or not a local government is subject to streamlining based on the annual progress report (APR) which details the number of building permits that a jurisdiction issued in the last year. Existing law is unclear because in one section HCD is required to base its determination on the last two APRs and in another the latest one. In practice, HCD has based the determination off the most recent APR. The amendments clarify that HCD's determination of whether a jurisdiction is subject to streamlining is based on the jurisdictions' latest annual progress report (APR).

- Local jurisdictions are subject to streamlining if they have not issued enough building permits in the last reporting period (every four years) to meet their regional housing needs assessment (RHNA). Local jurisdictions must streamline developments that restrict 50% of the units in a development to lower income (80% of AMI or below) if they don't issue enough building permits for their very-low income and low income RHNA by income category. This bill clarifies those requirements.

- SB 35 prohibits developments that were or are subject to a subdivision under the Subdivision Map Act, unless the development is either receiving low-income housing tax credits and pays prevailing wage or development is subject to both prevailing wage and a skilled and trained workforce is used. A development eligible for streamlining must be approved within 180 days and is only subject to objective design review standards in place at the time the application is submitted. The Subdivision Map Act (SMA) requires applications to be deemed complete 50 days after CEQA is complete. To align the timeline for SB 35 streamlining with the SMA, this bill would exempt a development that is consistent with the objective standards of the SMA from CEQA. In addition the amendments make clear that a development is subject to objective standards in the SMA at the time the application is submitted. Further, the bill states these changes are declaratory of existing law.

Shelter Crisis Act: In addition to changes to SB 35, this bill makes changes to AB 932 (Ting), Chapter 932, Statutes of 2017. The Shelter Crisis law allows a jurisdiction to declare a shelter crisis, and provides that upon such declaration the jurisdiction's liability for the provision of emergency housing is limited. It also provides that the jurisdiction may allow homeless persons to occupy designated public facilities for the duration of the crisis. Further, the Act suspends state and local housing, health, and safety standards for public facilities to the extent full compliance would hamper mitigation of the effects of the shelter crisis. The suspension of state and local standards applies during the shelter crisis.

AB 932 (Ting) allowed the City of Berkeley, Emeryville, Los Angeles, Oakland, or San Diego, the County of Santa Clara, or the City and County of San Francisco, upon the declaration of a shelter crisis to authorize "emergency housing" within those localities to include homeless shelters until January 1, 2021. The bill authorizes localities to adopt by ordinance reasonable local standards for the design, site development, and operation of homeless shelters. HCD must review and approve these ordinances for compliance with health and safety standards, and provide its findings to the Legislature. Localities would each be required to develop a plan to address the shelter crisis and, for every year of the declared shelter crisis, submit a progress report to the Legislature. This authority sunsets after January 1, 2021.

Some jurisdictions are planning to site emergency housing and shelters on city owned land. To do so the jurisdiction may lease or convey the property to a non-profit to operate. For the seven jurisdictions that declare a shelter crisis pursuant to AB 932, this bill exempts that action from CEQA. This year's budget included $500 million to assist local governments in responding to homelessness through emergency services and housing. To qualify for funding, cities must declare a shelter crisis. Several jurisdictions included in SB 932 plan to use those funds to construct emergency housing, this bill would expedite that process.

REGISTERED SUPPORT / OPPOSITION:

Support

Bridge Housing
Eric Garcetti, Mayor, City of Los Angeles

Opposition

League of California Cities
Public Counsel
Tenants Together

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