Date of Hearing: June 22, 2021

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
SB 728 (Hertzberg) – As Amended April 15, 2021

SENATE VOTE: 39-0

SUBJECT: Density Bonus Law: purchase of density bonus units by nonprofit housing organizations

SUMMARY: Authorizes a qualified nonprofit housing organization to purchase a for-sale unit under density bonus law. Specifically, **this bill**: Requires an applicant for a density bonus to agree that a for-sale unit meets either of the following:

1) The unit is initially occupied by a person or family of very low-, low-, or moderate income and offered at an affordable housing cost; or

2) The unit is purchased by a qualified nonprofit housing corporation pursuant to a specified recorded contract and includes all of the following:

   a) A repurchase option that requires a subsequent purchaser of the property;

   b) An equity sharing agreement; and

   c) Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner occupied housing units and will be sold or resold to only persons of very low-, low-, or moderate-income.

EXISTING LAW:

1) Requires all cities and counties to adopt an ordinance that specifies how they will implement state DBL. Requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least one of the following:

   a) 10 percent of the total units of a housing development for lower income households;

   b) 5 percent of the total units of a housing development for very low-income households;

   c) A senior citizen housing development or mobile home park;

   d) 10 percent of the units in a common interest development for moderate-income households;

   e) 10 percent of the total units for transitional foster youth, disabled veterans, or homeless persons; or

   f) 20 percent of the total units for lower-income students in a student housing development.

2) Requires the city or county to allow an increase in density on a sliding scale from 20 to 50 percent, depending on the percentage of units affordable to low- and very low-income households, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. Requires the increase in density on a sliding scale for moderate-income for-sale developments from 5 to 50 percent over the otherwise allowable residential density.

3) Provides that upon the request of a developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of disabled and guest parking, that meets the following ratios:

   a) Zero to one bedroom — one onsite parking space.

   b) Two to three bedrooms — one and one-half onsite parking spaces.

   c) Four and more bedrooms — two and one-half parking spaces.

4) Provides that if a project contains 100 percent affordable units and is within ½ mile of a major transit stop or houses persons with special needs or persons who are 62 years or older, the local government shall not impose a parking ratio.

5) Provides that the applicant shall receive the following number of incentives or concessions:

   a) One incentive or concession for projects that include at least 10 percent of the total units for moderate-income households, 10 percent of the total units for lower-income households, or at least 5 percent for very low-income households.

   b) Two incentives or concessions for projects that include at least 20 percent of the total units for moderate-income households, 17 percent of the total units for lower income households, or least 10 percent for very low income households.

   c) Three incentives or concessions for projects that include at least 30 percent of the total units for moderate-income households 24 percent of the total units for lower-income households, or at least 15 percent for very low-income households.

   d) Four incentives or concessions for projects that include 100 percent of the units affordable to lower-income households.

6) Requires an applicant for a density bonus to agree to the continued affordability of all very low- and low-income units for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage issuance program, or rental subsidy program. Rents shall be set at an affordable rent.

7) Requires that an applicant for a density bonus ensure that the initial occupant of all for-sale units are persons and families of very low-, low- and moderate income, and that the units are offered at an affordable housing cost.

FISCAL EFFECT: Unknown.

COMMENTS:

Author's statement**:** "While the State's Density Bonus Law has been amended multiple times in response to evolving housing conditions, California remains the epicenter of the American housing crisis. One in five California households spend half or more of their income on housing, the median cost of a home is more than two times the national average, and the state ranks 49th in the nation with a homeownership rate of 54 percent. Homeownership is a crucial foundation for helping low-income families find a path out of poverty. Yet as home prices continue to rise, many renters of all income levels – but especially those of low-and moderate- income – view homeownership as an unattainable goal. SB 728 authorizes developers and local governments, as an alternative to ensuring the initial occupant of a for-sale unit meets specified income requirements under the DBL, to ensure qualified nonprofit housing organizations can purchase the unit as well. The will allow nonprofits dedicated to providing homeownership solutions for families with limited-incomes the unique opportunity to serve communities through the DBL, and further ensures the individual density bonus for owner-occupied or for-sale units remains affordable over time."

Density bonus law: Density bonus law was originally enacted in 1979, to help address the affordable housing shortage and to encourage development of more low- and moderate income housing units. Over 40 years later, the state faces the same affordable housing challenges. Density bonus is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100 percent affordable developments as well. In return for inclusion of affordable units in a development, developers are given an increase in density over a city's zoned density and concessions and incentives. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units.

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

- Ten percent of the total units for lower income households;
- Five percent of the total units of a housing for very low income households;
- A senior citizen housing development or mobilehome park;

- Ten percent of the units in a common interest development for moderate income households;

- Ten percent of the total units of a housing development for transitional foster youth, disabled veterans, or homeless persons; or

- Twenty percent of the total units for lower income students in a student housing development, as specified.

As part of the density bonus application, a developer may also request incentives, concessions and parking ratio reductions. The number of incentives and concessions, and the parking ratio reduction, vary depending on the percentage and type of affordable housing included in a project.

Ownership models: A developer can requested a density bonus to build for-sale units. For-sale must be initially sold at an affordable price to moderate income purchasers and subject to an equity sharing agreement that allows the original owner to retain a portion of the equity while a portion goes to the local government to reinvest in affordable housing. This bill would allow a developer to sell a unit to a non-profit organization that would retain ownership of the property should it be sold to subsequent buyers. Each homeowner would share some of the equity upon resale but unlike existing law, the property would remain affordable to future owners.

According to the sponsor, a specific situation arose where a developer was interested in using DBL to produce affordable owner-occupied units; Habitat for Humanity would then buy those units from the developer, take possession to apply an affordability covenant, and sell the unit to a qualified family. This process would allow the developer to sell the unit without having to expend additional resources to find qualified buyers and ensure that affordable unit remains affordable. During negotiations, however, the city attorney prohibited Habitat from acquiring the units because they were not a “qualified buyer” under density bonus law. Ultimately, Habitat was unable to acquire the units.

This bill would, as an alternative to ensuring the initial occupant of a for-sale unit meets specified income requirements under the DBL, authorizes qualified nonprofit housing organizations to purchase the unit and maintain their affordability. According to the sponsor, several other cities and local Habitat affiliates would be interested in utilizing this new authorization should it be become law.

Surplus Land Act (SLA): If land is no longer needed or is not being held for exchange, a local agency must follow certain procedures prior to disposal of this "surplus" land. The intent behind the disposal procedures is to promote the use of surplus land towards affordable housing, parks and recreation purposes, open-space purposes, and transit-oriented development. The disposal procedures provide a Right of First Refusal to entities agreeing to use the land for, amongst other things, affordable housing. When a site is developed for affordable housing, a developer can sell the units at an affordable price to lower and moderate income buyers. SLA cross references density bonus law which only allows developers to sell the units subject to an equity sharing agreement and does not allow for the Habitat for Humanity model. The sponsor has identified a surplus site in the City of Folsom that the city would like to sell to the local Habitat for Humanity affiliate to develop into ownership units but the City won’t approve the sale because the statute requires an equity sharing agreement that does not include Habitat’s model. This bill should address that concern by amending density bonus law to add the Habitat for Humanity model of ownership which allows a non-profit to retain ownership of the home when it is sold by a buyer and sell it to a new buyer at an affordable cost.

***Arguments in support**:* Supporters argue that this bill will increase homeownership options for families by offering an alternative model to the existing equity sharing agreement and will allow the units to remain affordable after the first owner sells the property.

Arguments in opposition: None on file that relate to the substance of this 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

Habitat for Humanity California (Sponsor)
AIDS Healthcare Foundation
American Planning Association, California Chapter
Housing Action Coalition
Montecito Association
San Francisco Bay Area Planning and Urban Research Association

Opposition

None on file related to the current version.

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