Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
SB 765 (Wiener) – As Amended June 18, 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. Specifically, **this bill**:

1) Clarifies that a development project that meets satisfies specified objective planning standards is not subject to a conditional use permit, any other discretionary approval from the planning commission or any other equivalent board or commission responsible for the review of development projects, and are subject to the ministerial approval process provided for in the bill.

2) Specifies that nonresidential portions of a mixed use project in which 2/3 of the square footage of the development is for residential use is also subject to the streamlined ministerial approval process, including any additional residential square footage granted by a density bonus.

3) Deletes the requirement that the Department of Housing and Community Development (HCD) determine if a locality is subject to streamlining based on whether or not the number of building permits is less than the locality's share of the regional housing needs (RHNA) by income category for the reporting period.

4) Provides that if a locality issues building permits for fewer units of housing affordable to households making between 80% and 120% of area median income (AMI) than were required for the RHNA cycle for the last four year reporting period, a project that dedicates 50% of the total number of units of housing for households making 120% of AMI or below can access streamlining.

5) Restates existing law that the receipt of a density bonus does not constitute a valid basis to find a housing development in consistent with objective zoning standard or object design review standards and therefore not eligible for streamlining.

6) States the intent of the Legislature that the streamlining authorized by SB 35 (Wiener) should be interrupted and implemented in a manner to afford the fullest possible weight to the interest of and the approval and provision of the highest number of housing units.

7) Clarifies the Federal Emergency Management Agency (FEMA) standards by which a flood plain may or may not be subject to ministerial approval.

8) Provides that developments in which100% of the residential portion of the development are affordable to low income households that also include other non-residential uses are required to pay prevailing wage but not hire a skilled and trained workforce.

9) Restates existing law, that a development that receives low income housing tax credits and is subject to prevailing way or a development that is subject to prevailing wage and skilled an trained workforce and the development involves a subdivision of a parcel than it is subject to streamlining and ministerial approval.

10) Provides that a local government can only impose object planning standards that are in effect at the time the original submittal of an application for streamlining.

11) Require local governments to determine the objective planning standards that a development conflicts with based on the "original" submittal of the development application.

12) Provides that a change in the zoning ordinance or general land use designation subsequent to the date an application was originally submitted shall not constitute a valid basis to disprove a project.

13) Provides that any design review that is enforceable on a development applying for streamlining shall be interpreted and implemented in a manner to afford the fullest possible weight and the provide for the highest number of housing units.

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

15) 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, to facilitate the lease conveyance or encumbrance of land owned by the local government, to provide financial assistance to the development that received streamlined approval that is used for housing for very low, low, or moderate income households.

16) Defines "development" to mean a residential or mixed income project as described in the application submitted by the development proponent that includes any density or concessions, incentives or waivers of the development standards pursuant to state Density Bonus Law (Government Code Section 65915).

17) Defines "state agency" to mean every state office, officer, department, division, bureau, board, and commission but does not include the California State University or the University of California.

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.

FISCAL EFFECT: Unknown.

COMMENTS:

Background: Last year, 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.

Changes to trigger for streamlining: 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 permitted 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. Under this bill, if a local government has not issued enough permits to meet its moderate income RHNA (between 80% and 120% of AMI) for the reporting period and dedicates 50% to moderate income then the developer could access the streamlining process provided for under SB 35 (Wiener). This proposal raises several policy

concerns. Based on housing element production reports most jurisdictions are not meeting their moderate income RHNA. This is likely because most moderate income units are not deed-restricted, so local governments cannot differentiate them from above-moderate income or market rate units. Under this bill, developers could choose to dedicate 50% of the units in a development to moderate income, rather than low-income to access streamlining. In many markets, outside of high cost areas, moderate income is market rate, so in return for the benefits afforded by streamlining the community would be receiving no lower income units. This bill does not require that the moderate income units be deed restricted. Ultimately, the impact of this change would likely be communities would see very affordable units through streamlining.

Additional changes:

SB 35 (Wiener) requires local governments to determine the objective planning standards that a development conflicts with 60 days after the development has been submitted for a development that contains 150 or fewer units and within 90 days of submittal for a project containing more than 150 units. This bill would require the local government to base that determination on the "original" submittal of the development. It's not clear in the bill if the application for the development must be complete at the time of the original submittal. This could create confusion for both developers and local governments.

SB 35 (Wiener) states that if a development is consistent with objective zoning and design review standards at the time the development is submitted to the local government for approval than it can access streamlining, provided it meets the other standards in the bill. Density bonuses and concessions and incentives are explicitly excluded from these objective standards, because the process of density bonus for receiving a density bonus and concession and incentives is itself ministerial and not subject to objective standards. This bill seems to restate that in a confusing and duplicative way.

Arguments in opposition: Several organizations have raised concerns with the addition of streamlining for moderate income housing units and the impact it would have on the number of lower income units that would be streamlined. In addition, several organizations have raised concerns regarding elements of the bill that are intended to be clarifying but may be confusing and have unintended consequences including: changes to the definition of mixed use developments that qualify for streamlining, changes to projects that are subdivided and access to streamlining, and changes to how density bonuses would be treated in streamlined projects.

Related legislation:

SB 850 (Committee on Budget and Fiscal Review) – This bill makes several changes that are duplicative or conflict with recently passed budget trailer bill.

Committee Amendments: In order to address some of the policy considerations raised above, the Committee may wish consider reinstating the role of HCD in determining whether a locality is subject to streamlining (thereby reverting to existing law), and to striking all of the other provisions in the bill, except for the following provisions:

1) Clarify that parking standards provisions contained in SB 35 are applicable to automobiles.

2) Provide that 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, to facilitate the lease conveyance or encumbrance of land owned by the local government, to provide financial assistance to the development that received streamlined approval that is used for housing for very low, low, or moderate income households.

3) Consistent with the Legislature's intent when passing SB 35 (Wiener), clarify that a development project that meets specified objective planning standards is subject to a streamlined, ministerial approval process and is not subject to a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a project under CEQA.

Double-referred: This bill was gutted and amended on June 14, 2017 and is double-referred to the Committee on Local Government where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Bridge Housing

Opposition

American Planning Association, California Chapter
California Rural Legal Assistance Foundation (oppose unless amended)
California State Association of Counties
Housing California (oppose unless amended)
League of California Cities
Policy Link (oppose unless amended)
Public Advocates (oppose unless amended)
Public Counsel (oppose unless amended)
Rural County Representatives of California
Tenants Together
Urban Counties of California
Western Center on Law and Poverty (oppose unless amended)

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