

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1585 (Bloom) – As Amended April 20, 2017

SUBJECT: Planning and zoning: affordable housing: single application.

SUMMARY: Establishes an affordable housing zoning board in each city and county to process a comprehensive permit for specified housing developments that include affordable housing units. Specifically, **this bill:**

- 1) Adds, to the list of reforms and incentives that facilitate and expedite the construction of affordable housing contained in existing law, the establishment of a streamlined process for the approval of affordable housing units, pursuant to the bill's provisions.
- 2) Defines the following terms:
 - a) "Affected local agency" to mean a city, county, or city and county, including a charter city, charter county, or charter city and county (hereafter referred to as "city or county"), with jurisdiction over the proposed affordable housing units or housing project that would be subject to a comprehensive permit issued by an affordable housing zoning board;
 - b) "Affordable housing unit" to mean a single-family or multifamily residential development with an affordable housing cost, as defined, or an affordable rent, as defined, for very low-, low-, and moderate-income households;
 - c) "Affordable housing zoning board" or "board" to mean the entity established within a city or county authorized to issue a comprehensive permit, as specified.
 - d) "Applicant" means either of the following:
 - i) 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, including, but not limited to, the following:
 - (1) The United States Housing Act of 1937 (42 U.S.C. Section 1437 et seq.);
 - (2) The Housing Authorities Law (Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code);
 - (3) Programs administered by the Department of Housing and Community Development pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code for the purpose of providing grants and other financing for housing; and,
 - (4) Financial assistance received from the California Housing Finance Agency pursuant to Part 3 (commencing with Section 50900) of Division 31 of the Health and Safety Code.
 - ii) A developer proposing to build a housing project;

- e) “Comprehensive permit” means a conditional use or other discretionary permit issued by an affordable housing zoning board in accordance with 3), below, that allows for the development of affordable housing units by a public agency or nonprofit organization or a housing project by a developer; and,
 - f) “Housing project” to mean a residential development of which 5% of the units are affordable to persons making 60% of less of the area median income and 10% of the units are affordable to persons making 80% of less of the area median income. Specifies that these units shall be subject to a recorded affordability restriction for at least 55 years. Specifies that this shall not be construed to nullify an inclusionary zoning ordinance requiring a greater percentage of the residential units within a project to be affordable to low- and very low- income households.
- 3) Establishes, within each city and county, an affordable housing zoning board (board), and requires members of the planning commission of the city or county to serve ex official as members of the affordable housing zoning board.
 - 4) Requires proceedings of the board to be subject to the Ralph M. Brown Act, and requires the board to comply with the California Public Records Act.
 - 5) Provides that the board shall be deemed the lead agency for purpose of the California Environmental Quality Act (CEQA) with respect to the issuance of a comprehensive permit.
 - 6) Allows an applicant to submit to the board a single application for a comprehensive permit. Requires the board to transmit a copy of the application to each affected local agency.
 - 7) Requires the board to conduct a public hearing on the application for a comprehensive permit within 30 days of receipt of the application. Allows the applicant, representatives of any affected local agencies, and any persons who would be substantially affected by the issuance of the comprehensive permit to have the right to appear at the hearing. Specifies that the public hearing shall be completed in no more than 180 days.
 - 8) Requires the board, by majority vote, to approve, approve with conditions, or deny an application for a comprehensive permit within 40 days after the conclusion of the public hearing.
 - 9) Requires the board to consider all of the following, in making its decision:
 - a) The general plan and zoning ordinances of the affected local agency that apply to the proposed affordable housing units or housing project. Prohibits the board from abrogating a provision of the general plan or zoning ordinances of an affected local agency as they apply to the proposed affordable housing units or housing project, except that the board may grant the applicant a density bonus in accordance with existing law;
 - b) The share of the region housing needs as determined pursuant to existing law for the jurisdiction in which the applicant proposes to build affordable housing units or housing project;
 - c) Whether the applicant has made the certifications required by 12), below;

- d) Any documents or other evidence presented at the public hearing by the applicant, the representatives of the affected local agencies, or other persons who would be substantially affected by the issuance of the comprehensive permit; and,
 - e) The recommendations of experts or consultants retained by the board, if any, pertaining to the proposed affordable housing units or housing project.
- 10) Requires, if the board approves or approves with conditions, an application for a comprehensive permit, the board to issue the permit to the applicant. Specifies that a comprehensive permit shall have the same force and effect as a conditional use or other discretionary permit issued by the affected local agency.
- 11) Requires, if the board does not approve, or approve with conditions, or deny an application for a comprehensive permit within 40 days after the conclusion of the public hearing, as required, the application to be deemed approved and the board to issue the comprehensive permit.
- 12) Requires an applicant for a comprehensive permit to do all the following, as applicable:
- a) Certify to the affordable housing zoning board that either of the following is true, as applicable:
 - i) That the proposed affordable housing units or housing project development is a public work for purposes of existing law requiring prevailing wage; and,
 - ii) If the proposed affordable housing units or housing project development is 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 geographic area, as determined by the Director of Industrial Relations, as specified. Requires, if the board approves the application, then for those portions of the affordable housing units or housing project development that are not a public work, all of the following shall apply:
 - (1) The applicant shall include the prevailing wage requirement in all contracts for the performance of the work;
 - (2) Contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages;
 - (3) Except as provided in 5), below, 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, which may be reviewed, as specified, within 18 months after the completion of the affordable housing units or housing project, or by an underpaid worker through an administrative complaint of civil action. Specifies that if a civil wage and penalty assessment is issued, the contractor, subcontractor and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to existing law contained in the Labor Code;

- (4) Proves that 3), above, shall not apply if all contractors and subcontractors performing work on the affordable housing units or housing 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 the enforcement of that obligation through an arbitration procedure, as specified; and,
 - (5) Notwithstanding existing law, 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 provided in a bona fide collective bargaining agreement covering the worker, as specified.
- b) For proposed affordable housing units or housing project development with a cost exceeding ___ dollars, certify to the affordable housing zoning board that a skilled and trained workforce will be used to complete the affordable housing units or housing project, as defined. Requires, if the board approves the application, the following to 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 affordable housing units or housing project;
 - ii) Every contractor and subcontractor shall use a skilled and trained workforce to complete the affordable housing units or housing project;
 - iii) Except as provided below in iv), the applicant shall provide to the board, on a monthly basis while the project or contract is being performed, a report demonstrating compliance, as specified. Requires the monthly report to be a public record under the California Public Records Act and shall be open to public inspection. Specifies that an applicant that fails 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. Requires any contractor or subcontractor that fails to use a skilled and trained workforce to be subject to a civil penalty of \$200 per day for each worker employed in contravention of the skilled and trained workforce requirement. Allows penalties to be assessed by the Labor Commission within 18 months of completion of the affordable housing units or housing project using the same procedures for issuance of civil wage and penalty assessments pursuant to existing law, and requires penalties to be paid to the State Public Works Enforcement Fund; and,
 - iv) Specifies that iii), above, shall not apply if all contractors and subcontractors performing work and the affordable housing units or housing project are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure, as specified.
- 13) States that the Legislature finds and declares that encouraging and streamlining the development of affordable housing throughout the state is a matter of vital statewide concern, thereby applying the provisions of the bill to charter cities.

- 14) Declares that reimbursement to local agencies shall be made, if the Commission on State Mandates determines that this act contains costs mandated by the state.

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.
- 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.

FISCAL EFFECT: This bill is keyed fiscal and contains a state mandated local program.

COMMENTS:

- 1) **Bill Summary.** 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 area median income (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 made up of the members of the planning commission, who would serve in an ex officio capacity. 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. 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.

This bill is an author-sponsored measure.

- 2) **Background on Massachusetts 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.

- 3) **Author's Statement.** According to the author, "Fixing California's housing crisis will require a multi-pronged approach, in addition to protecting rental and affordable stock we need to also be able to build affordable and workforce housing reliably and easily. It is estimated that the state needs over 1.5M newly constructed homes to meet the demand of the housing crisis. Currently the state is way below that goal barely building 80, 000 new units a year. AB 1585 offers a responsible streamlined process that will help us achieve our housing need goals."
- 4) **Policy Considerations.** The Committee may wish to consider the following:
- a) **How will CEQA review work?** 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 government's 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.
 - b) **Why create an affordable housing zoning board?** The bill's provisions establish an affordable housing zoning board in each city and county and specifies that members of the planning commission of the city or county shall serve ex officio as members of the affordable housing zoning board. Questions from a coalition in opposition to the bill, including the Urban Counties of California, the Rural County Representatives of California, the California State Association of Counties, and the League of California Cities (coalition), note that it is unclear in the bill who will serve on the Board as voting members, and who will make the decision regarding board membership.

The Committee may wish to consider why the existing planning commission or city council and board of supervisors process is not adequate, and whether this bill duplicates processes already in place to review development applications.
 - c) **Vague and undefined terminology.** The coalition notes that the language in the bill does not specifically detail what a "comprehensive permit" means, what is included in the permit, and if this replaces other permits issued at the local level.
- 5) **Arguments in Support.** None on file.
- 6) **Arguments in Opposition.** The coalition believes this bill would make "sweeping changes to the current process under which housing developments are approved at the local level and seems to duplicate processes already in place, not to mention removing local control by elected [city and county officials] regarding housing projects."
- 7) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on April 19, 2017 and passed on a 4-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

American Planning Association, California Chapter (unless amended)

California State Association of Counties

Construction Employers' Association (unless amended)

League of California Cities

Rural County Representatives of California

Urban Counties Caucus

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