

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2501 (Bloom and Low) – As Amended April 14, 2016

SUBJECT: Housing: density bonuses.

SUMMARY: Makes a number of changes to density bonus law. Specifically, **this bill:**

- 1) Clarifies that when an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within the jurisdiction of a city or county, that local government shall provide the applicant with waiver and reduction of development standards for the production of housing units and child care facilities, in addition to incentives or concessions, as currently provided in density bonus law.
- 2) Prohibits a local government from conditioning the submission, review, or approval of an application for a density bonus on the preparation of an additional report or study that is not otherwise described in density bonus law.
- 3) Requires, in order to provide for the expeditious processing of a density bonus application, the local government to do all of the following:
 - a) Adopt procedures and timelines for processing a density bonus application;
 - b) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete, consistent with density bonus law; and,
 - c) Notify the applicant for a density bonus whether the application is complete in a manner that is consistent with the Permit Streamlining Act (Act).
- 4) Modifies the circumstance under which a local government can refuse to grant a concession or incentive to a developer to when a concession or incentive "does not reduce the cost of the development" rather than when it "is not required in order" to provide for the affordable housing costs.
- 5) Provides that a local government must bear the burden of proof for the denial of a requested concession or incentive.
- 6) Provides that denial of a requested concession or incentive will be deemed to have exhausted the applicant's existing administrative remedies.
- 7) Clarifies that "density bonus" means the maximum allowable gross residential density.
- 8) Clarifies that a developer that makes an application for a density bonus may elect to accept no increase in the density of a project.
- 9) Clarifies that the definition of "density bonus" includes any incentive or concessions, or wavier or reduction of development standard, provided to the applicant for the production of housing units and child care facilities.

- 10) Adds "mixed use development" to the definition of "housing development." Mixed use development means developments consisting of residential and nonresidential uses in which the nonresidential uses are less than 50% of the total square footage of the development and are limited to neighborhood commercial use and to the first floor of the buildings that are two or more stories. Neighborhood commercial means small scale-general or specialty stores that furnish goods and services primarily to residents of the neighborhood.
- 11) Provides that the granting of a concession or incentive cannot, in and of its self, require a special study.
- 12) Deletes the requirement that incentives or concessions proposed by a developer or local government result in "identifiable, financially sufficient" and actual cost reductions, and instead, require the "identifiable" and actual cost reductions.
- 13) Clarifies that each component of any density bonus calculation, including base density and bonus density, resulting in fractional units will be separately rounded up to the next whole number. Finds and declares that this provision is declaratory of existing law.
- 14) Provides that the density bonus law shall be interpreted liberally in favor of producing the maximum number of total housing units.
- 15) Provides that no reimbursement is necessary because a local agency has the authority to levy service charges, fees, or assessment sufficient to pay for the program or level of service mandated by this act.

EXISTING LAW:

- 1) Requires all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.
- 2) 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 any one of the following:
 - a) 10% of the total units for lower-income households;
 - b) 5% of the total units of a housing for very low-income households;
 - c) A senior citizen housing development or mobilehome park; and,
 - d) 10% of the units in a common-interest development (CID) for moderate-income households.
- 3) Requires that the applicant agree to, and the city or county ensure, continued affordability of all low- and very low-income units that qualified the applicant for the density bonus for at least 30 years.
- 4) Requires that the applicant agree to, and the city or county ensure, that the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in a

Common Interest Development (CID) are moderate income and that the units are offered at a cost affordable to moderate-income households.

- 5) Requires the local government to enforce an equity-sharing agreement upon the resale of any moderate-income units that qualified a housing development for a density bonus.
- 6) Allows, upon sale of the unit, the seller to keep the value of any improvements, the down payment, and the seller's proportionate share of appreciation.
- 7) Provides that the local government shall recapture its proportionate share of appreciation, which shall be used within three years for promotion of affordable homeownership.
- 8) Requires the city or county to allow an increase in density of 20% over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for low-income, very low-income, or senior housing, and by 5% for moderate-income housing in a CID.
- 9) Requires that the density bonus for low-, very low-, and moderate-income units increase incrementally according to the following formula:
 - a) For each 1% increase above 10% for low-income units, the density bonus shall increase by 1.5% to a maximum of 35%;
 - b) For each 1% increase above 5% for very low-income units, the density bonus shall increase by 2.5% to a maximum of 35%; and,
 - c) For each 1% increase above 10% for moderate-income units, the density bonus shall increase by 1% to a maximum of 35%.
- 10) Requires cities and counties to provide an applicant for a density bonus concessions and incentives based on the number of below market-rate units included in the project as follows:
 - a) One incentive or concession, if the project includes at least 10% of the total units for low-income households, 5% for very low-income households, or 10% for moderate-income households in a CID;
 - b) Two incentives or concessions, if the project includes at least 20% of the total units for low-income households, 10% for very low-income households, or 20% for moderate-income households in a CID; and,
 - c) Three incentives or concessions, if the project includes at least 30% of the total units for low-income households, 15% for very low-income households, or 30% for moderate-income households in a CID.
- 11) Specifies that concessions or incentives may include the following:
 - a) A reduction in site development standards;
 - b) A modification of zoning code requirements or architectural design requirements that exceed the minimum building standards, including a reduction in setbacks, square

- footage requirements, or parking requirements, that results in identifiable, financially sufficient, and actual cost reductions;
- c) Approval of mixed-use zoning in conjunction with the housing project, if commercial, office, industrial, or other land uses will reduce the cost of the housing development, and, if such nonresidential uses are compatible with the project; or,
 - d) Other regulatory incentives or concessions proposed by the developer or the city or county that result in identifiable cost reductions.
- 12) Requires the local government to grant the incentive or concession requested by the developer, unless the city or county makes written findings that:
- a) The concession or incentive is not needed to provide the affordable housing; or,
 - b) That the concession or incentive would have a specific adverse impact on health and safety, the environment, or an historical resource.
- 13) Prohibits a city or county from applying any development standard that will have the effect of precluding the construction of housing that qualifies for a density bonus at the densities or with the concessions or incentives required by density bonus law.
- 14) Allows a developer to request a waiver or reduction of development standards.
- 15) Specifies that the developer must show that the requested waiver or modification of development standards is necessary to make the housing units economically feasible.
- 16) Defines "development standard" to include site and construction conditions that apply to a residential development, pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.
- 17) Requires a city or county to grant either an additional density bonus or an additional concession or incentive, when the applicant proposes to include a child care facility in or adjacent to the housing development.
- 18) Provides a 15% density bonus to the developer of any market-rate housing project who donates land to a city or county that could accommodate housing for very low-income households equal to at least 10% of the number of units in the market-rate development. For each 1% increase above the 10%, the density bonus shall increase by 1% up to a maximum combined density increase of 35%.
- 19) Provides that to be eligible for the land donation density bonus, all of the following conditions must be met:
- a) The applicant must donate and transfer the land no later than the approval of the final subdivision map, parcel map or development application;
 - b) The land being donated is suitable to accommodate units affordable to very-low income households in an amount not less than 10% of the number of residential units of the proposed development;

- c) The transferred land is at least one acre or can accommodate 40 units, has the appropriate general plan designation, is appropriately zoned for affordable housing, can be served by infrastructure, and the land has all the necessary permits and approvals;
 - d) The land is subject to deed restrictions ensuring continued affordability;
 - e) The land is donated to the local agency or to a housing developer approved by the local agency; and,
 - f) The transferred land is either within the boundary of or, if the local agency agrees, within 1/4 mile of the proposed development.
- 20) Provides that, upon the developer's request, the local government may not require parking standards greater than the following (the developer may, however, request additional parking incentives or concessions):
- a) Zero to one bedrooms: one onsite parking space;
 - b) Two to three bedrooms: two onsite parking spaces; and,
 - c) Four or more bedrooms: two and one-half parking spaces.
- 21) Clarifies that local governments may still grant density bonuses greater than what is provided under state law, or lower for developments that do not meet the requirements of state law.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** This bill makes a number of changes to density bonus law. The bill clarifies that when an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within the jurisdiction of a city or county, that local government shall provide the applicant with waiver and reduction of development standards for the production of housing units and child care facilities, in addition to incentives or concessions, as provided currently in density bonus law. The bill also prohibits a local government from conditioning the submission, review, or approval of an application for a density bonus on the preparation of an additional report or study that is not otherwise described in density bonus law. The bill requires, in order to provide for the expeditious processing of a density bonus application, the local government to do all of the following: a) Adopt procedures and timelines for processing a density bonus application; b) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete, consistent with density bonus law; and, c) Notify the applicant for a density bonus whether the application is complete in a manner that is consistent with the Permit Streamlining Act (Act).

Additionally, the bill modifies the circumstance under which a local government can refuse to grant a concession or incentive to a developer to when a concession or incentive "does not reduce the cost of the development" rather than when it "is not required in order" to provide for the affordable housing costs, and provides that a local government must bear the burden of proof for the denial of a requested concession or incentive.

This bill is sponsored by the Western Center on Law and Poverty and the California Rural Legal Assistance Foundation.

- 2) **Author's Statement.** According to the author, "California remains one of the most expensive housing markets in the United States. Through the loss of redevelopment agencies and reductions in state and federal housing funding, fewer resources are available to address this need. One tool for increasing affordable housing production is through regulatory incentives that reduce barriers to the production of affordable housing and encourage market-based solutions. State Density Bonus law (Government Code Sections 65915 – 65918) provides concessions and incentives to housing developers who agree to make a percentage of the units in their development affordable to low- and moderate-income households. However, the law has a number of ambiguous provisions that discourage developers from utilizing it, or are used by local governments to prevent developers from accessing the law.

"Developers and local governments need certainty in order for Density Bonus law to be an effective incentive to produce affordable housing. Right now that certainty is lacking. AB 2501 would strengthen state Density Bonus law to help encourage market rate developers to include affordable units within residential developments, and reduce costs for affordable housing developers. AB 2501 would address a number of these ambiguous provisions and strengthen the incentives."

- 3) **Background.** Density bonus law was originally enacted in 1979, but has been changed numerous times since. The Legislature enacted the density bonus law to help address the affordable housing shortage and to encourage development of more low- and moderate-income housing units. Nearly forty years later, the Legislature faces the same 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% 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. Because of numerous amendments over the years, state density bonus law is confusing and subject to interpretation by both developers and cities as to its meaning.

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:

- a) 10% of the total units for lower-income households;
- b) 5% of the total units of a housing for very low-income households;
- c) A senior citizen housing development or mobilehome park; and,
- d) 10% of the units in a common-interest development (CID) for moderate-income households.

A developer can submit a request to a local government as part of their density bonus application for incentives and concessions. Developers can receive the following number of incentives or concessions:

- a) One incentive or concession for projects that include at least 10% of the total units for lower-income households, at least 5% for very low-income households, or at least 10% for moderate-income households in a common interest development
 - b) Two incentives or concessions for projects with at least 20% lower-income households, at least 10% for very low-income households, or at least 20% for moderate-income households in common interest developments.
 - c) Three incentives or concessions for projects with at least 30% lower-income households, at least 15% for very low-income households, or at least 30% for moderate-income households in common interest developments.
- 4) **Arguments in Support.** According to the sponsors, Western Center on Law and Poverty and the California Rural Legal Assistance Foundation, "AB 2501 is one piece of a multi-pronged effort by legislators, housing advocates, and other organizations to address California's unfortunate dominance of the list of the country's least-affordable housing markets. By reducing regulatory barriers to housing development, this bill would stretch any increase in state housing funding further and would induce market-rate developers to build below-market units without any public funding."
- 5) **Arguments in Opposition.** Opponents argue that this bill contains provisions that would limit the ability of a city to interpret its own development standards, diminish the role of planning commissions and impose unrealistic timeframes.
- 6) **Double-Referral.** This bill was heard by the Housing and Community Development Committee on April 13, 2016, where it passed with a 5-1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation [SPONSOR]
 Western Center on Law and Poverty [SPONSOR]
 California Apartment Association
 California Association of Realtors
 California Housing Consortium

Opposition

California State Association of Counties
 Cities of Fontana and Torrance (based on 4/5/2016 version)
 League of California Cities (based on 4/5/2016 version)

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