Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 73 (Chiu, Caballero, Bonta and Kalra) – As Amended March 28, 2017

SUBJECT: Planning and zoning: housing sustainability districts.

SUMMARY: Allows a city or county to create a housing sustainability district to complete upfront zoning and environmental review in order to receive incentive payments for development projects that are consistent with district's ordinance. Specifically, **this bill**:

1) Defines the following terms for the purposes of cities and counties creating housing sustainability districts:

    a) "Approving authority" to mean an agency of a city, county, or city and county that is established in the city or county's housing sustainability district ordinance and designated to review permit applications for development within the housing sustainability district, as specified.

    b) "City, county, or city and county" to include a charter city, charter county, or a charter city and county [analysis will refer to "city or county" hereafter].

    c) "Department" to mean the Department of Housing and Community Development (HCD).

    d) "Developable area" to mean the area within a housing sustainability district that can be feasibly development into residential or mixed use development, including land area occupied by or associated with underutilized residential, commercial, or industrial buildings or uses that have the potential to be converted for residential or mixed use, in accordance with the rules and regulations of the office, except for the following:

        i) Land that is already substantially developed, including existing parks and open space; or,

        ii) Areas exceeding one-half acre that are unsuitable for development due to topographical features or environmental preservation.

    e) "Eligible location" to mean any of the following:

        i) An area located within one-half mile of public transit;

        ii) An area of concentrated development; or,

        iii) An area that, by virtue of existing infrastructure, transportation access, existing underutilized facilities, or location, is highly suitable for a residential or mixed use housing sustainability district.

    f) "Mixed use" to mean that up to 50% of the square footage of a proposed development is designated for nonresidential use.

    g) "Office" to mean the Office of Planning and Research (OPR).

h) "Project" to mean a proposed residential or mixed use development within a housing sustainability district.

i) "Housing sustainability district" to mean an area within a city or county designated as specified, that is superimposed over an area within the jurisdiction of the city, county, or city and county in which a developer may elect to develop a project in accordance with either the housing sustainability district ordinance or the city or county's otherwise applicable general plan and zoning ordinances.

j) "Housing sustainability district ordinance" to mean the ordinance adopted by a city, or county, as specified.

2) Allows a city or county to establish by ordinance a housing sustainability district, upon receipt of preliminary approval by OPR, as specified.

3) Requires the city or county to adopt the ordinance in accordance with the requirements of zoning regulations in state law.

4) Requires an area proposed to be designated as a housing sustainability district to satisfy all of the following requirements:

a) The area is an eligible location, including any adjacent area served by existing infrastructure and utilities;

b) The area is zoned to permit residential use through the ministerial issuance of a permit. Other uses may be permitted by conditional use or other discretionary permit, provided that the use is consistent with residential use;

c) Density ranges for multifamily housing for which the minimum densities shall not be less than those deemed appropriate to accommodate housing for lower-income households as set forth in Housing Element Law, and a density range for single-family attached or detached housing for which the minimum densities shall not be less than 10 units to the acre. A density range shall provide the minimum dwelling units per acres and the maximum dwelling units per acre;

d) The development of housing is permitted, consistent with neighborhood building and use patterns and any applicable building codes;

e) Limitations or moratoriums on residential use do not apply to any of the area, other than any limitation or moratorium imposed by court order;

f) The area is not subject to any general age or other occupancy restrictions, except that the city or county may allow for the development of specific projects exclusively for the elderly or the disabled for assisted living;

g) Housing units comply with all applicable federal, state, and local fair housing laws;

h) The area of the proposed housing sustainability district does not exceed 15% of the total land area under the jurisdiction of the city or county, unless OPR approves a larger area, as specified;

i) The total area of all housing sustainability districts within the city or county does not exceed 30% of the total land area under the jurisdiction of the city or county;

j) The ordinance establishing the housing sustainability district provides for the manner of review by an approving authority, as designated by the ordinance, as specified, and in accordance with the rules and regulations adopted by OPR; and,

k) Development projects in the area comply with requirements regarding the replacement of affordable housing units affected by the development.

5) Allows the city or county to apply uniform development policies or standards that will apply to all projects within the housing sustainability district, including parking ordinances, public access ordinances, grading ordinances, hillside development ordinances, flood plain ordinances, habitat or conservation ordinances, view protection ordinances, and requirements for reducing greenhouse gas emissions.

6) Allows the city or county to provide for mixed use development within the housing sustainability district.

7) Provides that an amendment or repeal of a housing sustainability district ordinance shall not become effective, unless HCD provides written approval to the city or county. Allows the city or county to request approval of a proposed amendment or repeal by submitting a written request to HCD. Requires HCD to evaluate the proposed amendments or repeal for the effect of that amendment or repeal on the city or county's housing element. Provides that if HCD does not respond to a written request for amendment or repeal of an ordinance within 60 days of receipt, the request shall be deemed approved.

8) Requires the housing sustainability district ordinance to do all of the following:

a) Provide for an approving authority to review permit applications for development within the housing sustainability district, as specified;

b) Require that at least 20% of the residential units constructed within the housing sustainability district be affordable to very low-, low-, and moderate-income households and subject to a recorded affordability restriction for at least 55 years, subject to c), below;

c) For a city or county that includes its entire regional housing needs allocation within the district, the percentages of the total units constructed or substantially rehabilitated within the district shall match the percentages in each income category of the city or county's regional housing need allocation. States that nothing in this section shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, general plan amendment, specific plan, resolution or other land use policy or regulation requiring that any housing development contain a fixed percentage of affordable housing units.

d) Specify that a project is not deemed to be for residential use or it is infeasible for actual use as a single or multifamily residence;

e) Require that an applicant for a permit for a project within the housing sustainability district do the following, as applicable:

i) Certify to the approving authority that either of the following is true, as applicable:

(1) The entirety of the project is a public work for purposes of state prevailing wage laws; or,

(2) If the project is not in its entirety 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 geography, as determined by the Director of Industrial Relations, as specified. If the approving authority approves the application, then for those portions of the project that are a public work, all of the following shall apply:

(a) The applicant shall include prevailing wage requirements in all contracts for the performance of the work;

(b) Contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate or per diem wages;

(c) 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, except as provided for in (d) below;

(d) If all contractors and subcontractors performing work on the 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 enforcement of that obligation through an arbitration procedure, then (c) above does not apply; and,

(e) 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 proved in a bona fide collective bargaining agreement to cover the worker, as specified.

ii) For projects with a cost exceeding an unspecified dollar amount, certify to the approving authority that a skilled and trained workforce, as specified, will be used to complete the project. If the approving authority approves the application, the following shall apply:

(1) 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 project;

(2) Every contractor and subcontractor shall use a skilled and trained workforce to complete the project;

(3) The applicant shall provide to the approving authority, on a monthly basis while the project or contract is being performed, a report demonstrating compliance, as specified, and except as provided in 4), below. States that a monthly report shall be a public record under the California Public Records Act and shall be open to public inspection. Failure 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. Any contactor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of $200 per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner, as specified;

(4) Specifies that 3), above, shall not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement (PLA) that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure; and,

(5) Provides for relocation assistance for persons and families displaced from their residences due to development within the district.

9) Provides that this section shall not be construed to affect the authority of a city or county to amend its zoning regulations, as specified, except to the extent that an amendment affects a housing sustainability district.

10) Requires the city or county to comply with a streamlined environmental review process pursuant to 44), below.

11) Allows a city or county that has proposed an ordinance establishing a housing sustainability district to apply to OPR for preliminary approval of a housing sustainability district, and provides that OPR shall make a preliminary determination as to the eligibility of the proposed housing sustainability district for approval.

12) Provides that OPR shall approve an application for preliminary approval for a zoning incentive payment if it determines that the proposed ordinance meets the requirements of the bill's provisions and the city or county's housing element is in compliance. Requires OPR to inform the applicant of the deficiencies in its application, should OPR deny the application. Allows a city or county to reapply upon correcting those deficiencies.

13) Requires OPR to transmit its determination to the applicant and to HCD.

14) Requires an applicant city or county, to submit all of the following information with its application:

a) A description of the boundaries of the proposed district;

b) A description of the developable land within the proposed district;

c) A description of other residential development opportunities within the city or county, including infill development and reuse of existing buildings within already developed areas;

d) A copy of the housing element, as specified;

e) A copy of the adopted housing sustainability district ordinance;

f) A copy of the environmental impact report prepared pursuant to the streamlined environmental review process pursuant to 44), below;

g) A copy of the city or county's design review standards, if any, as specified; and,

h) Any other materials that establish the city or county's compliance with the prevailing wage and public work requirements listed in 8d), above.

15) Requires OPR to confirm approval within 45 days of receipt, following preliminary approval of an application and upon receipt of acknowledgment that the ordinance has taken effect.

16) Requires HCD, on or before October 1 of each year following the approval of a city or county's housing sustainability district by OPR, to issue a certificate of compliance if it finds that the city, county, or city and county has satisfied all of the following requirements:

a) The city or county has in effect a housing sustainability district ordinance;

b) The housing sustainability district complies with the minimum requirements of 4), above;

c) The city or county has only denied a permit for a residential development consistent with its housing sustainability district ordinance, the provisions of its housing element, or the provisions of this bill; and,

d) The city or county has not adopted a design review standard pursuant to 35), below, that adds unreasonable costs to a residential or mixed use development, or impairs the economic feasibility of a proposed development, within the district.

17) Provides that if HCD finds that a city or county does not satisfy all of the requirements of 16), above, then HCD may deny certification of the district. Provides that a denial shall not affect the validity of the district ordinance or the application of the ordinance to a development or proposed development within the district.

18) Allows HCD to require a city or county to provide any information it deems necessary to review the city or county's housing sustainability district, as required.

19) Specifies that a city or county with a housing sustainability district approved by OPR is entitled to an unspecified zoning incentive payment, upon appropriation of funds by the Legislature for that purpose, based on the projected construction of new residential units. Prohibits replacement units from being considered new residential units.

20) Requires OPR to issue the first half of the zoning incentive payment upon preliminary approval of the ordinance and issuance of the EIR. Requires HCD to issue the second half of the zoning incentive payment within 10 days of submission of proof of issuance of building permits by the city or county for the projected units of residential construction within the zone, as specified.

21) Allows a city or county to incorporate provisions in its ordinance prescribing the contents of an application for a permit for residential development.

22) Allows a city or county to charge an application fee to persons seeking approval of a project within the district, as specified.

23) Allows the ordinance to provide for referral of an application for a permit to any officers, agencies, agencies, boards, or bureaus of the city or county for review and comment, and requires comments within 60 days of receipt.

24) Requires the applicable provisions of the city or county's general plan and district ordinance in effect at the time an application is submitted to the approving authority to govern the application for the purposes of the following:

    a) The processing and review of the application;

    b) The pendency of any appeal of a decision of the approving authority;

    c) If the application is approved, for five years following approval of the application; and,

    d) If the application is denied, to any further application for the same proposed development filed within two years following the date of the denial, unless the applicant elects to proceed under the city or county's general plan and ordinance in effect at the time when he or she submits that further application.

25) Requires the applicant to file an application for a permit with the clerk of the city or county and with the approving authority.

26) Requires the authority to conduct a public hearing in accordance with the Ralph M. Brown Act, and issue a written decision on the application within 120 days of receipt of the application, unless extended by agreement between the approving authority and the applicant. Requires the authority to file a copy of its written decision with the clerk of the city or county.

27) Deems an application approved if the approving authority fails to act within 120 days, or within the period agreed upon, and requires notice to any interested parties and the clerk of the city or county within 14 days of the application being deemed approved. Requires the notice provided to interested parties to specify that any appeals must be filed within 20 days.

28) Requires the approving authority to issue to the applicant a copy of its written decision, as specified.

29) Requires the approving authority to consider the requirements of the ordinance, and the requirement for replacement dwellings, as specified.

30) Allows the approving authority to deny an application only for the following reasons:

    a) The proposed development project does not fully comply with the ordinance;

    b) The applicant has not submitted all of the required information or paid an application fee, as specified; or,

c) The approving authority determines, based on substantial evidence in light of the whole record of the public hearing on the project, that a physical condition on the side of development that was not known and could not have been discovered with reasonable investigation at the time the application was submitted would have a specific adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, as specified.

31) Requires the clerk of the city or county to certify the following, as applicable, on a copy of the written decision of the approving authority:

a) No appeal has been filed, or has been dismissed or denied, within 20 days of the issuance of the decision of the approving authority; or,

b) The application is deemed approved by reason of the failure of the approving authority to issue a decision within 120 days of submission.

32) Allows the applicant to appeal a decision of an approving authority by filing a complaint in the superior court. Requires appeals to be filed within 20 days after the approving authority has filed its decision to deny or conditionally approve the application with the clerk. Requires the applicant to provide notice of the appeal and a copy of the complaint to the clerk. Requires the applicant to, within 14 days of filing the complaint, serve written notice and provide a copy of the complaint to all defendants by certified mail. Requires the court to dismiss the complaint if the applicant does not, within 21 days of filing, file an affidavit with the clerk certifying that the notices were provided.

33) Requires the complaint to allege the specific reasons why the approving authority's decision does not satisfy the requirements of the district ordinance, the provisions of this bill, or other applicable law. Requires the complaint to name the approving authority as a defendant.

34) Requires the approving authority to have the burden of proving that its decision satisfies the requirements of the district ordinance, the provisions of this bill, or other applicable law based on substantial evidence in light of the whole record.

35) Allows a city or county to, in accordance with regulations adopted by OPR, adopt design review standards applicable to development projects within the district to ensure that the physical character of development within the district is complementary to adjacent buildings and structures and is consistent with the city or county's general plan, including the housing element.

36) Prohibits a design review standard from adding unreasonable costs to a residential or mixed use development, or unreasonably impair the economic feasibility of a proposed development within the district. Provides that design review of a development shall not constitute a "project" for purposes of CEQA law.

37) Requires design review standards to be adopted at the same time as the ordinance and submitted to OPR with the city or county's application. Specifies that any subsequent additional design review standards or amendment of existing design review standards to be subject to written approval by HCD, as specified.

38) Requires, if a proposed development within a district includes any parcels being used for affordable housing at the time the application is submitted to the approving authority, the approving authority to condition its approval of the application on the applicant's agreement to replace those affordable housing units.

39) For purposes of 38), above, defines the following terms:

a) "Affordable housing" to mean a parcel of property that meets any of the following criteria:

i) The parcel includes rental dwelling units that are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower- or very low-income;

ii) The parcel is subject to rent or price control through a public entity's valid exercise of its police power; or,

iii) The parcel includes a housing development that is currently occupied by low- or very low-income households.

b) "Replace" to mean either of the following, as applicable:

i) If any affordable housing units are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower-income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower-income renter households occupied these units in the same proportion of lower-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied affordable housing units described in a development with occupied units, the proposed housing development shall provide units of equivalent size, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower-income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower-income renter households occupied these units in the same proportion of lower-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from HUD's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. The replacement units shall be subject to a recorded affordability restriction for at least 55 years.

ii) If all affordable housing units have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size, as existed at the highpoint of those units in the five-year period preceding the application to be made available at

affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower-income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low-income renter households occupied these units in the same proportion of low-income and very low-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from HUD's database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. The replacement units shall be subject to a recorded affordability restriction for at least 55 years.

iii) For any dwelling unit specified in i), above, that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower-income, the city or county may do either of the following, notwithstanding ii), above:

(1) Require that replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units shall be subject to 39b), above; and,

(2) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in 39b)i), above, is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

iv) Defines the term "equivalent size" to mean that the replacement units contain at least the same total number of bedrooms as the units being replaced.

40) Requires OPR to be responsible for the administration of the approval of a housing sustainability district and the award of the first half of the incentive payment. Requires HCD to be responsible for the continued compliance of a district with the bill's provisions and the award of the second half of the incentive payment, as specified.

41) Requires HCD to conduct, or cause to be conducted, an annual review of the housing sustainability district program. Specifies that HCD may require participating cities and counties to provide data on districts within their jurisdiction as necessary to conduct this review and prepare the report.

42) Requires HCD to publish a report on its Internet Web site not later than November 1, 2018, and each November 1 thereafter, and requires the report to include all of the following:

a) The status of the program through the fiscal year prior to the publication of the report;

b) An identification and description of cities and counties seeking preliminary determination from OPR;

c) An identification of approved housing sustainability district and the incentive payments awarded;

d) A summary of the land area within both proposed and approved housing sustainability districts and the purposes for which it is zoned;

e) The number of projects under review by an approving authority, proposed residential units, building permits issued, and completed housing units as of the date of the report's publication; and,

f) An estimate, for the current and immediately succeeding fiscal year, of the number and size of proposed new districts, potential number of residential units allowed in new districts, and anticipated construction activity.

43) Requires the return of the incentive payment by the city or county if no construction has started in a district within three years of the date that the first half of the incentive payment was made. Requires amounts repaid to be used to further incentive payments.

44) Requires, for housing sustainability districts, the following environmental review:

a) Requires a lead agency to prepare an EIR when designating a district to identify and mitigate, to the extent feasible, environmental impacts resulting from the designation. Requires the EIR to identify mitigation measures that may be undertaken by housing projects in the district to mitigate the environmental impacts identified by the EIR.

b) Requires the Judicial Council, on or before July 1, 2018, to adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the EIR for the designation or the approval of the designation that require the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings, as specified. These procedures shall apply to an action or proceeding brought to attack, review, set aside, void, or annual the certification of the EIR prepared as specified.

c) Requires the draft and final EIR to include a notice in not less than 12-point type stating the following:

THIS EIR IS SUBJECT TO SECTION 21155.10 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE DESIGNATION IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTION 21155.10 OF THE PUBLIC RESOURCES CODE. A COPY OF SECTION 21155.10 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS EIR.

d) Requires the draft and final EIR to contain, as an appendix, the full text of this section of the bill related to environmental review.

e) Requires the lead agency, within 10 days after the release of the draft EIR, to conduct an informational workshop to inform the public of the key analyses and conclusions of that report.

f) Requires, within 10 days before the close of the public comment period, the lead agency to hold a public hearing to receive testimony on the draft EIR. Requires the transcript of the hearing to be included as an appendix to the final EIR.

g) Allows a commenter on the draft EIR to submit to the lead agency a written request for nonbinding mediation, within five days following the close of the public comment period. Requires the lead agency to participate in nonbinding mediation with all commenters who submitted timely comments on the draft EIR and who requested the mediation. Requires mediation to end no later than 35 days after the close of the public comment period. Requires a request for mediation to identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated. Requires the lead agency to select one or more mediators who shall be retired judges or recognized experts with at least five years' experience in land use and environmental law or science, or mediation. Requires a mediation session to be conducted on each area of dispute with the parties requesting mediation on that area of dispute. Requires the lead agency to adopt, as a condition of approval, any measures agreed upon by the lead agency and any commented who requested mediation. Provides that a commenter who agrees to a measure shall not raise the issued addressed by that measure as a basis for an action or proceeding challenging the lead agency's decision to certify the EIR of the designation of the district.

h) Provides that the lead agency need not consider written comments submitted after the close of the public comment period, unless certain conditions are met.

i) Requires the lead agency to file the notice required in existing law within five days after the approval of the designation.

j) Requires the lead agency to prepare and certify the record of the proceedings as specified.

k) Requires the lead agency, no later than three business days following the date of the release of the draft EIR, to make available to the public in a readily accessible electronic format the draft EIR and all other documents submitted to or relied on by the lead agency in the preparation of the draft EIR. Requires that additional documents prepared after the release of the draft EIR that are part of the record to be made available to the public in the same manner.

l) Exempts documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected from being made readily accessible by the lead agency. Requires the lead agency to index these documents, as specified.

m) Requires the lead agency to encourage written comments on the project to be submitted in a readily accessible electronic format, as specified. Requires the lead agency to convert comments not in a readily accessible electronic format with seven days after receipt.

n) Requires the lead agency to indicate in the record of the proceedings comments received that were not considered by the lead agency, as specified, and not include the content of the comments.

o) Requires the lead agency to certify the record of the proceedings and provide an electronic copy of the record, within five days after the filing of the notice required by existing law, to a party that has submitted a written request for a copy. Allows a lead agency to charge and collect a reasonable fee from a party requesting a copy of the record for the electronic copy, as specified.

p) Requires the lead agency, within 10 days after being served with a complaint or a petition for a writ of mandate, to lodge a copy of the certified record of proceedings with the superior court. Requires any dispute over the content of the record to be resolved by the superior court.

q) Specifies that CEQA does not apply to a housing project undertaken in a district designated by a local government if both of the following are met:

   i) The housing project meets the conditions specified in the designation for the district; and,

   ii) The housing project is required to implement appropriate mitigation measures identified in the EIR to mitigate environmental impacts identified in that EIR.

45) Adds housing sustainability districts to the section of law related to the reforms and incentives used to facilitate and expedite the construction of affordable housing, as declared by the Legislature.

EXISTING LAW:

1) Requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element.

2) Requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an EIR on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. Requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

1) **Bill Summary.** This bill would allow a city or county to create a housing sustainability district in consultation with OPR and HCD. Because the zoning and environmental review would be completed when the district is being created, development projects that comply with the housing sustainability district ordinance would only need ministerial approval. Such

development projects would be required to pay prevailing wage. The bill would also create a streamlined judicial review on any cases challenging the district's EIR.

To encourage a city or county to form a housing sustainability district, the bill would incentivize the creation by specifying that the city or county would receive zoning incentive payments at two stages: (1) An incentive payment when the district is created, issued by OPR upon preliminary approval of the district ordinance and issuance of the EIR; and, (2) Upon permitting housing units within the district, an additional incentive payment would be issued by HCD to the city or county. The bill requires that incentive payments must be returned if construction has not commenced within three years from the date of the first incentive payment.

This bill is sponsored by the author.

2) **Author's Statement.** According to the author, "California is facing a severe housing crisis which, if left unaddressed, will continue to threaten our economic competitiveness, our ability to achieve our climate change goals through proper planning, and the fundamental prosperity and success of our residents.

"California's poverty rate is 20th in the nation but, when housing is factored in, it jumps to number one. The lack of significant investment in programs to support construction of housing that is affordable has had a considerable impact on the growing inequity in our state. About 1.7 million low-income renter households (almost 14% of all households) in California report spending *more than half* of their income on housing. California now has an annual affordable housing gap that totals $50 billion to $60 billion. The housing shortage currently costs the California economy between $143 billion and $233 billion per year, an effect that will continue to worsen. According to the McKinsey Global Institute, at current construction rates, California will have a projected housing shortfall of 3.5 million homes by 2025.

"AB 73 spurs the creation of much needed housing on infill sites around public transportation by incentivizing local governments to complete upfront zoning and environmental review and rewarding them when they permit housing."

3) **Policy Considerations.** The Committee may wish to consider the following:

   a) **Will cities and counties use this tool?** The process contained in the bill to designate a district is rigorous and requires a fair amount of upfront work and investment for the city or county to undertake. Additionally, the bill gives authority to OPR and HCD in terms of the approval process for the district and other subsequent actions. For instance, the bill specifies that an amendment or repeal of a housing sustainability district ordinance cannot become effective, unless HCD provides written approval to the city or county, and sets up a formal process for the city or county to request approval of a proposed amendment or repeal.

   The bill also allows a city or county to adopt design review standards applicable to development projects within the district, but only in accordance with regulations adopted by OPR. The bill specifies that the design review standards shall not add unreasonable costs or unreasonably impair the economic feasibility of a proposed development. Given

these issues, the Committee may wish to consider whether the unspecified zoning incentive payments are enough of a benefit for a city or county to undertake the costs and work associated with creating a district.

b) **Identification of funding source.** The bill specifies that a city or county with an approved district is entitled to a zoning incentive payment, upon appropriation of funds by the Legislature for that purpose, to be based upon the number of new residential units constructed within the district. However, no funding source is specified.

c) **Repayment of incentive payment.** The bill requires that if no construction has started in a district within three years of the date that the first half of the incentive payment was made, then the city or county must return the full amount of the payment to HCD. The Committee may wish to consider whether there are factors outside of a city or county's control that might result in there being no construction in this timeframe, and whether the city or county should be penalized for this.

d) **Concerns.** A coalition of groups in San Francisco called the SF Council of Community Housing Organizations submitted a letter of concerns on this bill. They note that the bill is "in effect setting up a By-Right development system…and while it is an "opt-in" planning district state authorization, practically speaking that means pro-development jurisdictions like San Francisco are more likely to opt in and slow-growth suburban jurisdictions not." The SF Council of Community Housing Organizations supports establishing core conditions for any entitlement streamlining legislation including: (1) a safe harbor for communities where sufficient production of affordable housing does not warrant state pre-emption over local policy and decision-making; (2) a significant affordable housing standard on top of any local inclusionary requirements; and, (3) that local governments maintain the authority to enact, expand and enforce local affordable housing policies, including inclusionary housing, incentive zoning, impact fees, labor, and anti-demolition policies and proper environmental review, among other core minimum conditions.

4) **Arguments in Support.** Supporters argue that this bill is a creative solution to help California address the housing crisis, similar to what Massachusetts has enacted called the Smart Growth Zoning Overlay District Act (commonly known as 40R). Supports believe that the success of 40R indicates that incentivizing local governments to complete upfront zoning and environmental review and rewarding them when they permit housing will jumpstart the creation of much needed housing.

5) **Arguments in Opposition.** None on file.

6) **Double-Referral.** This bill is double-referred to the Natural Resources Committee and will be heard next in that Committee, should the bill pass this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association.
LeadingAge California

Concerns

SF Council of Community Housing Organizations

Opposition

None on file

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