Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Juan Carrillo, Chair
AB 3068 (Haney) – As Amended April 18, 2024

SUBJECT: Adaptive reuse: streamlining: incentives

SUMMARY: Establishes the Office to Housing Conversion Act, creating a streamlined, ministerial approvals process for adaptive reuse projects, as defined, and provides certain financial incentives for the adaptive reuse of existing buildings. Specifically, **this bill**:

1) Defines the following terms related to the adaptive reuse investment incentive program:

    a) "Adaptive reuse investment incentive funds" means, with respect to a qualified adaptive reuse project property for a relevant fiscal year, an amount up to or equal to the amount of ad valorem property tax revenue allocated to the participating local agency, excluding the revenue transfers required by education allocations, as specified, from the taxation of that portion of the total assessed value of the real and personal property of an adaptive reuse project property that is in excess of the qualified adaptive reuse project property's valuation at the time of the proponent's initial request for funding.

    b) "Program" means an adaptive reuse investment incentive program established pursuant to this bill.

    c) Proponent" means a party or parties that meet all of the following criteria:

        i) The party is named in the application for a permit to construct a qualified adaptive reuse project submitted to the city or county.

        ii) The party will be the fee owner of the qualified adaptive reuse project property upon the completion of that development.

2) Allows a city or a county to establish an adaptive reuse investment incentive program, beginning the 2024-25 fiscal year.

    a) Requires a city or county that establishes an adaptive reuse incentive program to pay adaptive reuse investment incentive funds to the qualified adaptive reuse project to subsidize the affordable housing units, upon approval by a majority of the entire membership of the city's and county's governing body.

    b) Requires that requests for the payment of adaptive reuse investment funds to be filed by a proponent with the governing body of the city or county in the time and manner established by that governing body.

    c) Provides that if a city and county approves a request for the payment of adaptive reuse incentive funds, payment of the funds shall begin within the first fiscal year after the qualified reuse property is issued a certificate of occupancy.

3) Allows a city or special district to pay the city or county an amount equal to the amount of ad valorem property tax revenue allocated to that city or special district, but not the actual

allocation, derived from the taxation of that portion of the total assessed value of that real property that is in excess of the property's valuation at the time of the proponent's initial request for funding, for the purpose of subsidizing the affordable housing units required pursuant to this bill.

4) Adds the "Office to Housing Conversion Act" to the list in existing law that requires the Department of Housing and Community Development (HCD) to provide notice to the city, county, or city and county if the city or county is in violation of state law. HCD may notice the Attorney General to enforce state law.

5) Establishes the Office Housing Conversion Act (Act).

6) Defines for purposes of the Act, the following terms:

   a) "Adaptive reuse" means the retrofitting and repurposing of an existing building to create new residential or mixed uses including office conversion projects. "Adaptive reuse" shall not include the retrofitting and repurposing of any light industrial use, unless the planning director or equivalent position determines that the specific light industrial use is no longer useful for industrial purposes.

   b) "Adjacent portion of the project" means the portion of the project located on a site adjacent to the proposed repurposed existing building.

   c) "Broadly applicable housing affordability requirement" means a local ordinance or other regulation that requires a minimum percentage of affordable units and that applies to a variety of housing development types or entitlement pathways.

   d) "Impact fee" means any fee imposed pursuant to the Mitigation Fee Act.

   e) "Historical resource" means the same as defined in subdivision (j) of Section 5020.1 of the Public Resources Code, or a resource listed in the California Register of Historical Resources, as specified.

   f) "Light industrial use" means a use that is not subject to permitting by a district, as defined.

   g) "Local affordable housing requirement" means either of the following:

      i) A local government requirement that a housing development project include a certain percentage of units affordable to, and occupied by, extremely low, very low, lower, or moderate-income households as a condition of development of residential units.

      ii) A local government requirement allowing a housing development project to be a use by right if the project includes a certain percentage of units affordable to, and occupied by, extremely low, very low, lower, or moderate-income households as a condition of development of residential units.

   h) "Local government" means a city, including a charter city, a county, or a city and county.

   i) "Mixed use" means residential uses combined with at least one other land use, but not including any industrial use.

j) "Office conversion project" means the conversion of a building used for office purposes or a vacant office building into residential dwelling units.

k) "Persons and families of low or moderate income" means the same as defined in Section 50093 of the Health and Safety Code.

l) "Phase I environmental assessment" means the same as defined in Section 78090 of the Health and Safety Code.

m) "Phase II environmental assessment" means the same as defined in Section 25403 of the Health and Safety Code.

n) "Preliminary endangerment assessment" means the same as defined in Section 78095 of the Health and Safety Code.

o) "Residential uses" includes, but is not limited to, housing units, dormitories, boarding houses, and group housing. "Residential uses" does not include prisons or jails.

7) Allows a local government to adopt an ordinance to implement this bill and specifies the process and requirements applicable to adaptive reuse projects, provided that the ordinance is consistent with, and does not inhibit the objectives of, the bill.

8) Finds and declares that this bill is a matter of statewide concern and applies to all cities, including charter cities.

9) Establishes that adaptive reuse projects that meet specified requirements outlined in 10) below shall be deemed by-right in all zones, and subject to the streamlined, ministerial review process, except that the nonresidential uses of a proposed mixed-use adaptive reuse project shall be consistent with the land uses allowed by the zoning or a continuation of an existing zoning nonconforming use.

10) Requires an adaptive reuse project to comply with all of the following requirements in order to use a streamlined, ministerial approval:

a) The adaptive reuse project and site are located on a site that satisfies both of the following:

i) It is a legal parcel or parcels located in a city if the city boundaries include some portion of either an urbanized area or urban cluster or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster.

ii) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.

b) The adaptive reuse project is proposed for any of the following:

i) An existing building that is less than 50 years old.

ii) An existing building that is listed on a local, state, or federal register of historic resources and the adaptive reuse project proponent complies with this bill.

iii) An existing building that is more than 50 years old and the local government has evaluated the site through a preliminary application that the building or site is a historic resource and the adaptive reuse project complies with this bill OR the site is not a historic resource.

c) Requires adaptive reuse projects for rental housing to meet either of the following affordability requires:

i) 8% of the units shall be affordable to very-low income households and 5% of the units for extremely low income households.

ii) 15% of the units shall be affordable to lower income households

d) Requires the development proponent to agree to the continued affordability of all affordable units for 55 years.

e) Requires adaptive reuse projects for owner-occupied housing to comply with either of the following affordability requirements:

i) 30% of the units shall be affordable to moderate-income households, as defined.

ii) 15% of the units shall be affordable to lower income households, as defined.

f) Requires the developer to agree to the continued affordability of all affordable units for ownership for 45 years.

g) Requires the housing development project to comply with all of the following when a local government has a local affordable housing requirement:

i) Requires the development project to include the percentage of affordable units required by the bill or the local requirement, whichever is higher.

ii) Requires the development project to meet the lowest income targeting require by either bill or the local requirement.

iii) Requires, in cases where the local affordable housing requirement is greater than 15% for lower income households and does not require the inclusion of units affordable to very low and extremely low income households, the rental housing development to do bother of the following:

I) Include 8% of the units for very low income households and 5% of the units for extremely low households.

II) Subtract 15% of units affordable to lower income households required by the local policy at the highest required affordability level.

h) Requires the development project to have the same bedroom and bathroom count ratio for the affordable units as the market rate units, that the affordable units be equitably distributed within the project, and that affordable units have the same type or quality of appliances, fixture, and finishes as the market rate units.

i) Requires that, at minimum, 50% of the square footage of an adaptive reuse project that includes mixed uses be dedicate to residential uses.

j) Requires the adaptive reuse project to complete a Phase I environmental assessment and, if warranted, a Phase II environmental assessment.

k) Requires the project proponent to remove or mitigate for hazardous substances found on the site, if any.

11) Allows an adaptive reuse project that satisfies the requirements of 10) above to include the development of new residential or mixed-use structures on undeveloped areas and parking area on the parcels adjacent to the proposed adaptive reuse project site, if all of the following are met:

a) The project on the site adjacent to the repurposed building complies with any of the following:

i) The development is consistent with object zoning standards, objective subdivision standards, and objective design review standards.

ii) The development meets the requirements of the Affordable Housing and High Road Jobs Act of 2022 (Chapter 4.1 (commencing with Section 65912.100). (AB 2011)

iii) The requirements of the Middle Class Housing Act of 2022 (Section 65852.24).

b) The development is located on a parcel or parcels that are located in a city or unincorporated area within an urbanized area or urban cluster and 75% of the perimeter is adjoined to parcels that are development with urban uses.

c) The development is not located in the coastal zone.

d) The development is not located on a site that would require the demolition of affordable housing, the sites was previously use for housing and was occupied in the past 10 years, requires the demolition of a historic structure, or the property contains units that are occupied by tenants or contains units that were offered up for sale to the general public.

e) The site does not contain tribal cultural resources, as specified.

f) The existing open space on the proposed project is not a contributed to a historic resource.

12) Establishes that the portion of the project that is adjacent to the adaptive reuse project is eligible for density bonus, incentives, or concessions, waivers, or reductions of development standards, and parking ratios, as defined.

13) Defines “adjacent portion of the project” to mean the portion of the project located on the site adjacent to the proposed repurposed building.

14) Requires a development proponent to notify the local government about its intent to submit a development application for an adaptive reuse project for a structure that is more than 50 years and not listed on a local, state, or federal register, of historic resources.

a) Requires a local government to evaluate the project site for historical resources upon received a notice of intent from a development proponent. Requires a local government to make a determination within 90 days of receiving the notice of intent.

15) Requires, in cases where the structure is or is part of historic resource or if the site has been found to be a significant historic resource, the adaptive reuse project proponent to sign an affidavit declaring that the project will only move forward if it complies with either of the following:

a) The United States Secretary of the Interior's Standards for Rehabilitation, as specifed.
b) The project is awarded federal historic rehabilitation tax credits pursuant or state historic rehabilitation tax credits, as specified.

16) Requires, in cases where a project proponent does not sign an affidavit for a site that is listed on a local, state, or historic register, the local government to process the adaptive reuse project. However, the local government may deny or conditionally approve the project if they local government makes a finding that the project will cause a significant adverse impact to the historic resources. Allows a local government to impose condition of approval mitigate adverse impact to the historic resource and to comply with the United States Secretary of the Interior's Standards for Rehabilitation, but the local government shall not impose other condition of approval.

a) Provides that the review of an adaptive reuse project shall not constitute a "project" for purposes of the California Environmental Quality Act (CEQA).

17) Requires a local government to approve an adaptive reuse project if the local government's planning director or equivalent position determines that the project is consistent with object planning standards, as defined.

18) Requires, if the planning director or equivalent position finds that the project is not consistent with object planning standards, a local government to provide the project proponent with written documentation of standards the project 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 adaptive reuse project to the local government pursuant to this section if the project contains 150 or fewer housing units.

b) Within 90 days of submittal of the adaptive reuse project to the local government pursuant to this section if the project contains more than 150 housing units.

c) If the local government fails to provide the required documentation identifying why a project is not compliant with objective planning standards, then the project is deemed compliant.

19) Requires a local government to determine that an adaptive reuse project and all related application for modifications is consistent object planning standards if there is substantial evidence in the record for a reasonable person to conclude that the project is consistent with object planning standards.

20) Requires all departments of a local government that are required to provide approval to an adaptive reuse project to comply with the time periods in 18) above.

21) Specifies that any design review of the adjacent portion of the project may be conducted by the planning commission or any equivalent board or commission for design review. Prohibits the design review process to be consistent with all objective standards and shall not chill or preclude ministerial approval within the following time periods:

    a) Within 90 days of submittal of the adaptive reuse project to the local government pursuant to this section if the project contains 150 or fewer housing units.

    b) Within 180 days of submittal of the qualified adaptive reuse project to the local government pursuant to this section if the project contains more than 150 housing units.

22) Provides that an adaptive reuse project that is consistent with all objective planning standards and consistent with all objective subdivision standards shall be exempt from CEQA and shall be subject to public oversight timelines in 21).

23) Requires a local government to provide the project proponent written documentation of which objective standard or standards the adaptive reuse project conflicts with, and an explanation for the reason or reasons the project conflicts with, that objective standard or standards consistent with the timelines described in 18) above.

24) Prohibits a local government from imposing automobile parking requirement on project on the adjacent portions of the adaptive reuse projects in any of the following instances:

    a) The adjacent portion of the project is within one-half mile of public transit.

    b) The adjacent portion of the project is within and architecture and historically significant historic district.

    c) When on-street parking permits are required but not offered to the occupants of the adjacent portion of the project.

    d) When there is a car share vehicle located within one block of the adjacent portion of the project.

25) Prohibits a local government from imposing parking requirements that exceed one parking space per unit for adjacent projects not on sites described in 24) above.

26) Prohibits a local government from requiring any of the following prior to approving an adaptive reuse project that meets the requirements of the bill.

    a) Studies, information, or other materials that do not pertain directly to determining whether the adaptive reuse project is consistent with the objective planning standards applicable to the development.

    b) Compliance with any standards necessary to receive a postentitlement permit, as defined.

c) Clarifies that a local government may still require a project to comply with standards necessary to receive a postentitlement permit after, as defined, a permit has been issued pursuant to this bill.

27) Provides that local government's approval of a project shall not expire if the project meets both of the following requirements:

a) The project includes public investment in housing affordability, beyond tax credits.
b) At least 20% of the units are affordable to households making at or below 80 percent of the area median income.

28) Provides that a local government's approve of a project shall remain valid for 3 years from the date of the final action of the approval or upon the date of the final judgement upholding that approval for projects that do not fall under 27). Clarifies that the approval shall remain valid for a project under going construction and "in progress," as defined.

a) Allows a local government to grant a one-time, one-year extension if the project proponent can prove that there has been significant progress toward getting the adaptive reuse project construction ready.

b) Provides that the time during which the approval is valid will be extended if the project proponent request modifications of the project to capture the approval of the modification, plus an additional 180 days.

29) Allows that development proponent to request a modification to a qualified adaptive reuse project that have been approved under the streamlined approval process if that request is submitted to the local government before the issuance of the final building permit required for construction.

a) Requires the local government to approve the modification if it determines that the medication consistent with the objective planning standard that were in effect when the original adaptive reuse project application was first submitted.

b) Require the local government to evaluate any modification with the same assumptions and analytical methodology that the local government originally used to assess consistency for the adaptive reuses project that was approved for streamlined, ministerial approval.

c) Requires the local government to determine if the requested modification is consistent with the objective planning standards, as specified, and shall approve or deny the modification request within 60 days after the submission of the request, or within 90 days if the design review is required.

30) Allows a local government to apply objective planning standards to an adjacent portion of the project adopted after the project application was first submitted to the requested modification in any of the following instances:

a) The adjacent portion of the project is revised that the total number of residential units or total square footage of the construction changes by 15% or more.

b) The adjacent portion of the project is revised such that the total number of residential units or total square footage changes by 5% or more and it is necessary to subject the project to an objective standard beyond those in effect at the time of the initial application to avoid an adverse impact, as defined.

c) Objective building standards relating to building, plumbing, electrical, fire and grading, may be applied to all modification application submitted prior to the first building permit.

31) Provides that a local government's review of a modification request is strictly limited to determining whether the modification affects the project's consistency with the objective planning standards and shall not be reconsider prior determination that are not affected by the modification.

32) Requires a local government to issue a permit required for an adaptive reuse project if the application substantially complies with the project as it was initially approved. Requires the local government to process the application without unreasonable delay and shall not impose any additional procedures not approved by this bill. Provides that issuance of any subsequent permits, as defined, shall not inhibit, chill, or preclude the adaptive reuse project.

33) Prohibits a local government from exercising discretion in approving a permit relating to a public improvement, as specified, on land owned by local government. Approval of a permit relating to a public improvement shall not inhibit, chill, or preclude the project.

34) Requires a local government to do all of the following when it receives an application for a public improvement:

a) Consider the application based upon objective standards that were in effect when the original project application was submitted.

b) Conduct its review and approval in the same manner as it would evaluate the public improve by a project that is not eligible for ministerial approval.

35) Prohibits a local government from doing any of the following when it receives an application for a public improvement:

a) Adopting or imposing requirement that apply to project solely or partially on that basis that the project is eligible for ministerial approval.

b) Delayed its consideration, review, or approval of the application.

36) Prohibits a local government from adopting or imposing any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this article.

37) Provides that this bill shall not affect a project proponent's ability to use any alternative streamlined by right permit processing adopted by a local government.

38) Provides that projects under this bill also qualify as a housing development project entitled to the protections of the Housing Accountability Act.

39) Provides that alterations to an existing building necessary to comply with the California Building Standards Code, International Existing Building Code, or California Historical Building Code shall not disqualify a qualified adaptive reuse project from the streamlined, ministerial review process established under this article.

40) An adaptive reuse project approved by a local government pursuant to this part shall meet all of the following labor standards:

a) The development proponent shall require in contracts with construction contractors, and shall certify to the local government, that the standards specified in this section will be met in project construction.

b) A development that is not in its entirety a public work, as defined, and approved by a local government, as specified, shall be subject to all of the following:

i) All construction workers employed in the execution of the development shall 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) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work for those portions of the development that are not a public work.

iii) All contractors and subcontractors for those portions of the development that are not a public work shall comply with both of the following:

I) Pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, 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) Maintain and verify payroll records, as specified, and make those records available for inspection and copying as provided in that section, except that if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure.

c) The obligation of the contractors and subcontractors to pay prevailing wages pursuant to this section may be enforced by any of the following:

I) The Labor Commissioner through the issuance of a civil wage and penalty assessment, which may be reviewed within 18 months after the completion of the project.

II) An underpaid worker through an administrative complaint or civil action.

III) A joint labor-management committee through a civil action under Section 1771.2 of the Labor Code.

ii) If a civil wage and penalty assessment is issued pursuant to this section, 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, as specified.

d) Provides that (c) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure.

41) Requires that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing does not apply to those portions of development that are not a public work if otherwise provided in a bona fide collective bargaining agreement covering the worker.

42) Clarifies that the requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule, as defined.

43) "Project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

44) Requires a development of 50 or more housing units approved by a local government to be subject to all of the following:

a) Requires the development proponent to require contracts with construction contractors and shall certify to the local government that each contractor of any tier who employs construction craft employees or will let subcontracts for at least 1,000 hours satisfies the requirements in subdivisions b) and c). A construction contractor is deemed in compliance with subdivisions b) and c) if it is signatory to a valid collective bargaining agreement that requires utilization of registered apprentices and expenditures on health care for employees and dependents.

b) Requires a contractor with construction craft employees to either participate in an apprenticeship program approved by the California Division of Apprenticeship Standards or request the dispatch of apprentices from a state-approved apprenticeship program. A contractor without construction craft employees shall show a contractual obligation that its subcontractors comply with this subdivision.

c) Requires each contractor with construction craft employees to make health care expenditures for each employee in an amount per hour worked on the development equivalent to at least the hourly pro rata cost of a Covered California Platinum level plan for two 40-year-old adults and two dependents 0 to 14 years of age for the Covered California rating area in which the development is located. A contractor without construction craft employees shall show a contractual obligation that its subcontractors comply with this subdivision. Qualifying expenditures shall be credited toward compliance with prevailing wage payment requirements set forth in Section 65912.130.

d) Requires the development proponent to provide to the local government, on a monthly basis while its construction contracts on the development are being performed, a report demonstrating compliance with subdivisions b) and c). The reports shall be considered public records under the California Public Records Act and shall be open to public inspection.

   i) A development proponent that fails to provide the monthly report shall be subject to a civil penalty for each month for which the report has not been provided, in the amount of 10 percent of the dollar value of construction work performed by that contractor on the development in the month in question, up to a maximum of ten thousand dollars ($10,000). Any contractor or subcontractor that fails to comply with subdivision b) or c) shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in violation of b) and c) above.

   ii) Allows penalties to be assessed by the Labor Commissioner within 18 months of completion of the development using the procedures for issuance of civil wage and penalty assessments, as specified, and may be reviewed, as specified. Penalties shall be deposited in the State Public Works Enforcement Fund, as specified.

e) Requires each construction contractor to maintain and verify payroll records. Each construction contractor shall submit payroll records directly to the Labor Commissioner at least monthly in a format prescribed by the Labor Commissioner, as specified. The records shall include a statement of fringe benefits. Upon request by a joint labor-management cooperation committee established pursuant to the Federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a), the records shall be provided pursuant to subdivision (e) of Section 1776 of the Labor Code.

f) Requires all construction contractors to report any change in apprenticeship program participation or health care expenditures to the local government within 10 business days, and shall reflect those changes on the monthly report. The reports shall be considered public records pursuant to the California Public Records Act and shall be open to public inspection.

g) Establishes a joint labor-management cooperation committee established pursuant to have standing to sue a construction contractor for failure to make health care expenditures, as specified.

45) Provides that an adaptive reuse project shall be exempt from all impact fee that are not directly related to the impacts resulting from the change of use of the site from nonresidential to residential or mixed use. Any fees charged shall be proportional to the difference in impacts caused by the change of use. This provision shall not apply to any adjacent portion of the project.

46) Specifies that any impact fees imposed on an adaptive reuse project pursuant to this bill shall, at the request of the project proponent, be collected on the date the certificate of occupancy is issued.

47) Provides that an adaptive reuse project proponent that requests for impact fees to be collected on the date the certificate of occupancy is issued, shall be required to execute a contract to pay the fees, or applicable portion thereof, within the time specified.

48) Specifies that the obligation to pay the fees pursuant to this bill shall inure to the benefit of, and be enforceable by, the local government that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fees, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local government shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated.

49) Provides that the contract executed pursuant to 48) above, may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local government imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

EXISTING LAW:

1) Establishes, pursuant to AB 1490 (Lee, Chapter 764, Statutes of 2023), a ministerial, streamlined approval process for the adaptive reuse of buildings into 100 percent affordable housing. (Government Code (GOV) § 65913.12)

2) Establishes, pursuant to SB 423 (Wiener, Chapter 778, Statutes of 2023), a streamlined, ministerial approval process, not subject to CEQA, for certain infill multifamily affordable housing projects that are compliant with local zoning and objective standards and that are proposed in local jurisdictions that have not met their regional housing needs allocation. (GOV § 65913.4)

3) Establishes, pursuant to AB 2011 (Wicks, Chapter 647, Statutes of 2022), a streamlined, ministerial approval process, not subject to CEQA, for certain infill multifamily affordable housing projects that are located on land that is zoned for retail, office, or parking. (GOV § 65912.100-65912.140)

4) Allows, pursuant to SB 6 (Caballero Chapter 659, Statutes of 2022), the Middle Class Housing Act of 2022, residential uses on commercially zoned property without requiring a rezoning. (GOV § 65852.24)

5) Authorizes the California Department of Housing and Community Development (HCD) to enforce state housing laws. (GOV § 65585)

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

COMMENTS:

1) **Bill Summary.** AB 3068 provides by-right ministerial approval of adaptive reuse projects that convert properties, inclusive of the structures and open space adjacent to the building, that have or may have historic significance. The bill provides financial assistance for affordable housing units required as part of the development. The bill establishes that

adaptive reuse projects under the bill, adjacent development to the building eligible for adaptive reuse, or modifications to the development shall be subject to objective review and ministerial approval. These projects, adjacent development, and modifications are not subject to CEQA. The bill requires that project labor agreements require a prevailing wage and contract with construction craft employees that participate in an apprenticeship program. This bill requires that impact fees imposed on the project be collected at the time the certificate of occupancy is issued. This bill also requires that the project proponent enter into a contract with the public agencies to pay the fees by the time certificate of occupancy is specified.

2) **Author's Statement.** According to the author, "COVID-19 permanently altered the way humans approach work. In the post pandemic era, many businesses realized that developments in technology allow them to move away from the 9 to 5, commuter model that kept downtown office buildings full of people during the work week. As the capital of technological innovation, California has been particularly impacted by this transition as more and more tech companies shift to offering remote work as a benefit to their employees.

"A major downside to this transition is California's emptying downtown business districts. Office vacancies across the state have hit record highs with Los Angeles and San Francisco both reaching over 30% vacancy rates. Many economists are theorizing that unless local and state governments act quickly, downtowns may be facing a doom-loop scenario with empty, devalued buildings leading to a severe decrease in local government tax bases, leading to decreased services and blight.

"Converting vacant office buildings into new residential units will not only stop doom-loop scenarios, it will also revitalize and enliven business districts that often became ghost towns after 5pm. California also continues to suffer from a statewide housing shortage – to address this local governments must plan for the production of more than 2.5 million homes in the next several years.

"Office to housing conversion is a win-win scenario that builds housing, preserves historic buildings, and creates new thriving communities in transit rich areas. California needs to get out of its own way and make office to housing conversions as easy as humanly possible. This bill does exactly that."

3) **Statewide Housing Needs**: According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update,[1] California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.[2]

---

[1] California Department of Housing and Community Development, *A Home for Every Californian*: 2022 Statewide Housing Plan. March 2022, https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136
[2] U.S. Department of Housing and Urban Development, Point in Time Counts. https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle. As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

a) 2.1 percent of the very low-income RHNA
b) 4.8 percent of the low-income RHNA
c) 4.8 percent of the moderate-income RHNA
d) 12.7 percent of the above moderate-income RHNA

4) **Cost of building housing:** It is expensive to build housing in California. The UC Berkeley Terner Center finds that challenging macroeconomic conditions, including inflation and high interest rates, affect the availability and cost of capital, resulting in rising costs for labor and materials.[3] Furthermore, workforce and supply shortages have exacerbated the already high price of construction in California, and economic uncertainty has made equity partners and lenders apprehensive about financing new housing development proposals.[4]

An analysis by the California Housing Partnership compares the cost of market rate development prototypes developed by the Terner Center with the median cost of developing affordable rental homes. In the four regions analyzed, the study found that the cost of developing one unit of affordable housing ranged from approximately $480,000 to $713,000, while the cost of developing one unit of market rate housing in the state ranged from approximately $508,000 to $637,000.[5]

5) **Recent State Efforts to Address the Housing Crisis:** In recent years, the state has taken a series of steps to address land use and regulatory constraints to new housing production. These include polices such as allowing accessory dwelling units by right,[6] reforming single family zoning,[7] and reforming the process local governments use to determine how much, where, and how to plan for housing. [8] The state has also enacted measures to expedite the approval of affordable housing. This includes measures to make supportive housing a by right use,[9] and make affordable and market-rate housing by right in jurisdictions where housing production is below identified targets.[10] This also includes measures to regulate and normalize the housing approval process,[11] and limit the ability of local governments to deny,

---

[3] David Garcia, Ian Carlton, Lacy Patterson, and Jacob Strawn, *Making It Pencil: The Math Behind Housing Development (2023 Update)*, Terner Center for Housing Innovation, December 2023, https://ternercenter.berkeley.edu/research-and-policy/making-it-pencil-2023/
[4] IBID.
[5] Mark Stivers, *Affordable Housing Compares Favorably to Market-Rate Housing From a Cost Perspective*, California Housing Partnership, January 2024: https://chpc.net/affordable-housing-compares-favorably-to-market-rate-housing-from-a-cost-perspective/#:~:text=It%20turns%20out%20that%20costs,market%2Drate%20developments%20do%20not.
[6] AB 2299 (Bloom), Chapter 735, Statutes of 2016 and SB 1069 (Wieckowski), Chapter 720, Statutes of 2016.
[7] SB 9 (Atkins), Chapter 162, Statutes of 2021.
[8] This includes many bills, including AB 72 (Santiago), Chapter 370, Statutes of 2017, AB 1397 (Low), Chapter 375, Statutes of 2017, SB 166 (Skinner), Chapter 367, Statutes of 2017, AB 686 (Santiago) Chapter 958, Statutes of 2018, AB 1771 (Bloom) Chapter 989, Statutes of 2018, and SB 828 (Wiener), Chapter 974, Statutes of 2018.
[9] AB 2162 (Chiu), Chapter 753, Statutes of 2018.
[10] SB 35 (Wiener), Chapter 366, Statutes of 2017, SB 423, Chapter 7778, Statutes of 2023.
[11] SB 330 (Skinner), Chapter 654, Statutes of 2019.

delay, or diminish projects that otherwise meet all of local objective standards.[12] These recent efforts included the passage of AB 2011 (Wicks, Chapter 647, Statutes of 2022), also known as the Affordable Housing and High Road Jobs Act of 2022. AB 2011 went into effect on July 1, 2023. AB 2011 allows housing development in areas that are zoned for parking, retail, or office buildings, and provides eligible developments with a streamlined, ministerial approvals process.

6) **Adaptive Reuse.** Adaptive reuse is the process of converting an existing non-residential building to housing. The ability to adaptively reuse a building is highly dependent on the initially designed use. For example, uses such as warehouses and big box retail could not functionally be adaptively reused, because their tall ceilings, single stories, and rudimentary plumbing would need to be completely reconstituted to be appropriate for human habitation. Office buildings maintain some potential for conversion, because their multi-floor layout is conducive to housing; however, the large floor plate configuration of most office buildings makes it difficult to provide the necessary light and air that is required for residential units throughout 100% of the building's square footage. For these conversions to occur, it would also need to be financially attractive to the property owner – something that has recently increased due to the sharp downturn in the downtown office market since the beginning of the COVID-19 pandemic.

   According to an April 24, 2020 brief published by McKinsey and Company, the onset of COVID-19 has aggravated the existing challenges that the retail sector faces, including:
   a) A shift to online purchasing over brick-and-mortar sales;
   b) Customers seeking safe and healthy purchasing options;
   c) Increased emphasis on value for money when purchasing goods;
   d) Movement towards more flexible and versatile labor; and
   e) Reduced consumer loyalty in favor of less expensive brands.

   The buildings most readily converted to housing are hotels and motels. These uses are already divided into quarters designed for short-term human habitation, and units can readily be converted to housing with the addition of kitchens. The viability of this conversion is visible in the success of Project Homekey, which has created over 15,000 units of housing to date, with a cost of approximately $306,000 per unit - substantially less than the current cost to build newly constructed housing.

   A local example of successful adaptive reuse can be found in the City of Los Angeles' Adaptive Reuse Ordinance (ARO). ARO has been a significant policy tool in revitalizing underused buildings within the city's downtown area. Introduced in 1999, the Ordinance was specifically designed to facilitate the conversion of existing commercial buildings into residential or mixed-use properties. By easing certain local requirements, the ARO has enabled developers to transform vacant or underutilized office buildings, theaters, and other commercial structures into vibrant residential units, contributing to urban density and reducing the need to build on undeveloped land. Notably, the Ordinance has been quite successful in adding housing stock to the city; since its inception, the ARO has led to the creation of over 12,000 residential units in downtown Los Angeles by some estimates, significantly impacting the local housing market and revitalizing the historic core of the city.

---

[12] AB 1515 (Daly), Chapter 378, Statutes of 2017, and SB 167 (Skinner), Chapter 368, Statutes of 2017.

7) **Adaptive Reuse Funding**. In the past three years, the Legislature has taken multiple actions to support adaptive reuse. HCD's Homekey program has allocated approximately $3.5 billion to convert hotels and motels to housing Californians at risk of, or experiencing, homelessness. Additionally, the 2022-2023 budget included $450 million one-time General Fund ($200 million in 2022-23 and $250 million in 2023-24) to convert existing commercial or office space to affordable housing. AB 1695 (Santiago, Chapter 639, Statutes of 2022) requires any notice of funding availability issued by HCD for an affordable multifamily housing loan and grant program to state that adaptive reuse of a property for an affordable housing purpose is an eligible activity. SB 451 (Atkins, Chapter 703, Statutes of 2019), established a $50 million program to be administered by the Office of Historic Preservation (OHP) and the California Tax Credit Allocation Committee (CTCAC) for the purpose of facilitating the rehabilitation, including adaptive reuse, of historic buildings.

   To help offset the costs associated with adaptive reuse projects, this bill would provide financial incentives for adaptive reuse projects in the following ways:

   a) Authorizing local agencies to establish an Adaptive Reuse Investment Incentive Program, through which an amount up to or equal to 15 years' worth of the amount of ad valorem property tax revenues could be transferred to the owners of qualifying adaptive reuse projects;

   b) Aligning program requirements so as to encourage the utilization of existing programs such as the Federal Historic Tax Credit, the newly adopted California Historic Tax Credit, the Mills Act, and the California Historical Building Code; and,

   c) Limiting a local governments' ability to charge impact fees for adaptive reuse projects that are not directly related to the impacts resulting from the change of use of the site from nonresidential to residential.

8) **Mitigation Fee Act.** When approving development projects, counties and cities can require the applicants to mitigate the project's effects by paying fees—known as mitigation fees, impact fees, or developer fees. The California courts have upheld impact fees for sidewalks, parks, school construction, and many other public purposes.

   When establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:

   a) Identify the fee's purpose.

   b) Identify the fee's use, including the public facilities to be financed.

   c) Determine a reasonable relationship between the fee's use and the development.

   d) Determine a reasonable relationship between the public facility's need and the development.

   When imposing a fee as a condition of approving a development project, the Mitigation Fee Act also requires local officials to determine a reasonable relationship between the fee's amount and the cost of the public facility. In its 1987 *Nollan* decision, the U.S. Supreme

Court said there must be an “essential nexus” between a project's impacts and the conditions for approval. In the 1994 *Dolan* decision, the U.S. Supreme Court said that conditions on development must have a "rough proportionality" to a project's impacts.

In the 1996 *Ehrlich* decision, the California Supreme Court distinguished between “legislatively enacted” conditions that apply to all projects and “ad hoc” conditions imposed on a project-by- project basis. *Ehrlich* applied the “essential nexus” test from *Nollan* and the “rough proportionality” test from *Dolan* to “ad hoc’ conditions. The Court did not apply the *Nollan* and *Dolan* tests to the conditions that were “legislatively enacted.” In other words, local officials have generally faced greater scrutiny when they impose conditions on a project-by-project basis. As a result of these decisions and the Mitigation Fee Act, local agencies have conducted nexus studies to ensure any proposed impact fees meet these legal tests for most impact fees. Other requirements in the Mitigation Fee Act ensure that impact fees are appropriately levied and spent.

On April 12 of this year, the United States Supreme Court decided *Sheetz v. County of El Dorado, California*. The case involved the takings clause of the Fifth Amendment to the U.S. Constitution. An El Dorado County resident challenged the county’s legislatively enacted traffic impact mitigation fee, arguing the county should only charge him based on the impact associated with his specific parcel. The main question was whether or not the same standards of “essential nexus” and “rough proportionality” apply to legislatively enacted fees as they do to ad-hoc fees.

In the *Sheetz* decision, the Court stated, “A legislative exception to the *Nollan/Dolan* test ‘conflicts with the rest of our takings jurisprudence,’ which does not otherwise distinguish between legislation and other official acts. *Knick v. Township of Scott*, 588 U. S. 180, 185 (2019).” The Court also proclaimed that, “...as we have explained, a legislative exception to the ordinary takings rules finds no support in constitutional text, history, or precedent. We do not address the parties’ other disputes over the validity of the traffic impact fee, including whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development. The California Court of Appeal did not consider this point—or any of the parties’ other nuanced arguments—because it proceeded from the erroneous premise that legislative permit conditions are categorically exempt from the requirements of *Nollan* and *Dolan*. Whether the parties’ other arguments are preserved and how they bear on Sheetz’s legal challenge are for the state courts to consider in the first instance.”

In addition, Justice Kavanaugh filed a concurring opinion, in which Justices Kagan and Jackson joined saying that, “I join the Court’s opinion. I write separately to underscore that the Court has not previously decided—and today explicitly declines to decide—whether ‘a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.’ *Ante*, at 10–11. Importantly, therefore, today’s decision does not address or prohibit the common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property. Moreover, as is apparent from the fact that today’s decision expressly leaves the question open, no prior decision of this Court has addressed or prohibited that longstanding government practice."

9) **Related Legislation.**
   a) AB 2488 (Ting). Would authorize a local government to designate one or more downtown revitalization and economic recovery financing districts for the purpose of financing office-to-residential conversion projects with incremental tax revenues generated by office-to-residential conversion projects within the district.
   b) AB 2909 (Santiago). Would facilitate the adaptive reuse of qualified historic properties, starting January 1, 2026, and ending January 1, 2036, by incentivizing property owners of buildings that are at least 30 years old through tax benefits to engage in such preservation and reuse activities.

10) **Previous Legislation.**

   a) AB 1490 (Lee), Chapter 764, Statutes of 2023, established a streamlined, ministerial approval process for "extremely affordable adaptive reuse projects."

   b) AB 529 (Gabriel), Chapter 743, Statutes of 2023, required the Department of Housing and Community Development to convene a working group no later than December 31, 2024, to identify challenges to, and opportunities that help support, the creation and promotion of adaptive reuse residential projects, as specified, including identifying and recommending amendments to state building standards

   c) SB 423 (Wiener), Chapter 778, Statutes of 2023, amended SB 35 (Wiener), which created a streamlined, ministerial local approvals process for housing development proposals in jurisdictions that have failed to produce sufficient housing to meet their RHNA.

   d) SB 6 (Caballero), Chapter 659, Statutes of 2022, established the Middle Class Housing Act of 2022, allowing residential uses on commercially zoned property without requiring a rezoning.

   e) AB 1695 (Santiago), Chapter 639, Statutes of 2022, required any notice of funding availability issued by HCD for an affordable multi-family housing loan and grant program to state that adaptive reuse of a property for an affordable housing purpose is an eligible activity.

   f) AB 2011 (Wicks), Chapter 647, Statutes of 2021, created the Affordable Housing and High Road Jobs Act of 2022, which created a streamlined, ministerial local review and approvals process for certain affordable and mixed-use housing developments in commercial zoning districts and commercial corridors. A current bill, AB 2243 (Wicks) would amend AB 2011 to facilitate the conversion of office buildings to residential uses, among other provisions.

   g) SB 451 (Atkins), Chapter 703, Statutes of 2019, established a $50 million program to be administered by the Office of Historic Preservation (OHP) and the California Tax Credit Allocation Committee (CTCAC) for the purpose of facilitating the rehabilitation of historic buildings.

11) **Arguments in Support**. YIMBY Action writes in support, "California is in the midst of a generational shift in work culture. Offices in places like downtown Los Angeles and the financial district in San Francisco are seeing the highest vacancy rates in 30 years.

Companies are shifting to hybrid work models with fewer employees working full-time in the office. California also continues to suffer from a statewide housing shortage. We have set an ambitious goal of creating 2.5 million new homes by 2030. According to HCD, the state will need 180,000 new units of housing each year just to keep up with existing demand, including 80,000 units affordable to lower income households. Yet California averages less than 100,000 new units per year, and has never produced more than 20,000 new affordable homes in any year. California is grappling with the implications of climate change. To meet state climate goals, new housing must be in developed areas that do not require long commutes and rely on low-emissions modes of travel like transit, biking, and walking.

"AB 3068 removes barriers to converting existing office buildings into housing and allows more people to live closer to work centers and transit, without changing the physical character of our neighborhoods. It provides a by-right, ministerial approval pathway to allow existing commercial buildings to be converted for housing and mixed- use, while providing safeguards to help preserve historic properties. Lastly, AB 3068 also authorizes local governments to establish tax rebate programs to subsidize adaptive reuse housing conversion projects to allow them to be more economically feasible."

12) **Arguments in Opposition.** According to the City of Santa Clarita, "the bill's provisions to require permits and entitlements to be conducted within 60 days if the project contains fewer than 150 housing units, and 90 days if the project is larger, jeopardizes the due diligence and responsibilities held by local governments to ensure projects are vetted to preserve public health, safety, and welfare. The City's regular entitlement and permit review process spans 6-9 months. Furthermore, the City has the tools, knowledge, and policies in place to continue to plan and develop innovative residential units that enhance the quality of life for our community. It is critical for the City to maintain local land use and zoning authority and ensure that we continue to have the ability to consider unique factors when reviewing residential development."

13) **Double-Referral.** This bill was double referred to the Committee on Housing and Community Development where it passed out on a 9-0 vote on April 17th, 2024.

REGISTERED SUPPORT / OPPOSITION:

Support

California Preservation Foundation [Sponsor]
YIMBY Action [Sponsor]
Advance SF
Boma San Francisco
California Apartment Association
California Preservation Foundation
East Bay for Everyone
East Bay Yimby
Emerald Fund
Grow the Richmond
Housing Action Coalition
Lendlease
Livable Communities Initiative

Mountain View Yimby
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
Plant Construction
Presidio Bay Ventures
Progress Noe Valley
Related California
San Francisco Chamber of Commerce
San Francisco Yimby
San Luis Obispo Yimby
Santa Cruz Yimby
Santa Rosa Yimby
South Bay Yimby
Southside Forward
Streets for People
Union Square Alliance
Urban Environmentalists
Ventura County Yimby
Webcor Builders

Opposition

City of Santa Clarita

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958, Linda Rios / L. GOV. / (916) 319-3958