

Date of Hearing: April 30, 2025

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 87 (Boerner) – As Amended April 24, 2025

SUBJECT: Housing development: density bonuses: mixed-use developments

SUMMARY: Prohibits an incentive or concession granted under Density Bonus Law (DBL) from being applied to the hotel, motel, bed and breakfast inn, or other visitor-serving portion of a mixed-use development project. Specifically, **this bill**:

- 1) Prohibits a city or county from applying incentives or concessions under DBL to the portion of a mixed-use development containing a hotel, motel, bed and breakfast inn, or other visitor-serving purpose being used that contains the hotel, motel, bed and breakfast inn, or other visitor-serving purpose use.
- 2) Makes technical and conforming changes.
- 3) Finds and declares that this bill addresses a matter of statewide concern rather than a municipal affair as that is used in Section 5 of Article XI of the California Constitution. Therefore, this bill applies to all cities, including charter cities

EXISTING LAW:

- 1) Establishes DBL, which requires local governments to grant a density bonus when an applicant for a housing development, defined as a development containing “five or more residential units, including mixed-use developments,” seeks and agrees to construct a project that will contain at least one of the following:
 - a) 10% of the total units of a housing development for lower-income households;
 - b) 5% of the total units of a housing development for very low-income households;
 - c) A senior citizen housing development or mobile home park;
 - d) 10% of the units in a common interest development (CID) for moderate-income households;
 - e) 10% of the total units for transitional foster youth, veterans, or persons experiencing homelessness;
 - f) 20% of the total units for lower-income students in a student housing development; or
 - g) 100% of the units of a housing development for lower-income households, except that 20% of units may be for moderate-income households. [Government (GOV) § 65915]
- 2) Requires local governments to grant a density bonus ranging from 20% to 50% for rental developments that include a minimum percentage of units affordable to very low-, low-, or moderate-income households, with the bonus increasing on a sliding scale based on the level of affordability provided. For 100% affordable rental developments, the law provides a bonus

of up to 80%, along with additional incentives such as increased height limits, reduced parking requirements, and modified development standards if the project is located within ½ mile of a major transit stop or in a low vehicle miles traveled (VMT) area. In certain cases, 100% affordable projects in qualifying areas may be allowed unlimited density. (GOV 65915)

- 3) Provides that, upon the developer's request, the local government may not require parking standards greater than the parking ratios specified in DBL. (GOV § 65915)
- 4) Requires applicants to receive concessions and incentives depending on the percentage of affordable housing included in the proposed development. (GOV § 65915)
- 5) Provides that, in no case may a local government apply any development standard that will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by DBL. (GOV § 65915)

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary.** This bill prohibits an incentive or concession granted for a mixed-use development containing a hotel, motel, bed and breakfast inn, or other visitor-serving purpose from applying to the portion of the proposed development containing hotel, motel, bed and breakfast inn, or other visitor-serving purpose use.

This bill is author sponsored.

- 2) **Author's Statement.** According to the author, "AB 87 ensures Density Bonus Law is being applied as it was intended, to increase California's affordable housing stock to meet increasing needs. Density Bonus Law is a tool that is meant to encourage the construction of units for low income Californians. However, there is currently a loophole in DBL that allows developers to gain incentives while not meaningfully contributing to affordable housing. In my district, a project application was submitted that allowed the development to exceed the city's height limit, a proposed 238-foot tower adding 139 hotel rooms and only 10 affordable units. California needs affordable housing options, and we need to hold developers using DBL to the intent of the law, which is to increase access to affordable housing for hard-working Californians."
- 3) **Planning for Housing.** The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Cities and counties use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific

consideration. Zoning ordinances and other development decisions must be consistent with the city or county's general plan.

- 4) **Density Bonus Law.** DBL grants certain benefits to developers who build affordable units in order to encourage greater affordable housing production. DBL requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least one of the following:
- a) 10% of the total units of a housing development for lower income households;
 - b) 5% of the total units of a housing development for very low-income households;
 - c) A senior citizen housing development or mobile home park;
 - d) 10% of the units in a CID for moderate-income households;
 - e) 10% of the total units for transitional foster youth, disabled veterans, or homeless persons; or
 - f) 20% of the total units for lower income students in a student housing development.

If a project meets one of these conditions, the city or county must allow an increase in density on a sliding scale from 20%-50% over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan, depending on the percentage of affordable units. A project that contains 100% affordable units can qualify for up to an 80% density bonus, or unlimited density if the proposed development is within ½ mile of a major transit stop, or located in a very low vehicle travel area.

DBL also grants certain reductions in minimum parking requirements and grants “incentives or concessions” that can be used to modify development policies that add costs or reduce the number of units a developer can build on a site. The number of incentives or concessions a project may be eligible for is based on the percentage of affordable units contained in the project, up to a maximum of five. Incentives and concessions can vary widely based on the individual projects, but examples can include reduced fees, waivers of zoning codes, or reduced parking requirements. DBL also allows developer waivers of any development standards that physically prevents the developer from constructing a project at the density allowed, along with the incentives or concessions, under DBL.

- 5) **Tower at the Beach.** In recent years, as DBL has been expanded to increase its efficacy and the amount of bonuses, incentives, and concessions, it has come under increased scrutiny regarding its intersection with local planning regulations. In San Diego, a proposed 22-story project at 970 Turquoise Street serves as an interesting case study on the intersection of state and local laws. The project developer is taking advantage of the project vesting provisions established under SB 330 (Skinner), Chapter 654, Statutes of 2019, in combination with DBL, a local San Diego density bonus program, and a unique-to-San Diego hotel provision to propose a 239' tall building where ordinarily a 30' height limit would apply. The site's 30' height limit was established by a 1972 voter initiative, Proposition D, which created San Diego's Coastal Height Limit Overlay Zone (not to be confused with California's Coastal Zone).

The site is locally zoned CC-4-2, which permits high-density commercial uses and limited residential development. Under this zoning, only 31 residential units would typically be allowed on the 0.67-acre site. However, by designating 15% of those base units (five units) for very-low-income households, the developer qualifies for a 50% density bonus under DBL, allowing for 16 additional market-rate units. A second 50% bonus, enabled by AB 1287 (Alvarez), Chapter 775, Statutes of 2023, which went into effect on January 1, 2024, was granted for the inclusion of another five units for moderate-income households. This added 16 more market-rate units. In total, DBL increased the project's residential count by 32 units, in exchange for 10 affordable units, raising the unit count from 31 to 63 units. Additionally, the project leverages local incentives under San Diego's municipal code to access 11 more residential units, through a local density bonus, because the proposal includes three-bedroom units. This brings the total number of residential units to 74.

The remaining 139 "units" included in the proposed development at 970 Turquoise Street are hotel rooms, classified as "visitor accommodations," which are allowed by-right under San Diego's commercial zoning for the site. The developer requested an incentive to the Floor Area Ratio (FAR) requirements of the City's municipal code to increase the project size and financial feasibility, and applied the entirety of that FAR incentive to the "commercial" component of the site (the hotel rooms). This is how the nearly 240' development in a zone with a 30' height limit came to be.

Notably, these hotel units are not intended for short-term tourist stays. Under the version of San Diego's local municipal code in effect at the time the developer submitted its preliminary application, visitor accommodations could legally be rented for more than 30 days, essentially allowing them to be used as housing units. The developer intends to use this provision to operate the hotel rooms, which will include kitchens, as long-term market-rate rental housing. Although San Diego has since updated its development code to prohibit the long-term rental of visitor accommodations, the project is vested under the prior rules under SB 330. As such, the new restrictions on using hotel rooms for long-term rentals do not apply to 970 Turquoise.

In total, the combination of DBL, San Diego's local bonus program, and San Diego's unique provision which previously allowed for the long-term rental of hotel units, resulted in this "213 residential unit" proposal that was not contemplated under San Diego's local planning regulations, in exchange for 10 affordable units under DBL. DBL directly unlocked an extra 32 market-rate units in exchange for the 10 affordable units. San Diego's own bonus program provided an extra 11 units. Finally, the provisions of San Diego's municipal code that allowed hotel units to function as apartment units unlocked an extra 139 "units" once the FAR incentive provided under DBL was applied to the hotel use.

- 6) **Arguments in Support.** Neighbors for a Better California, writes in support of the March 17, 2025 version of the bill, "California's housing shortage demands focused solutions. AB 87 ensures that DBL benefits are reserved for projects that meaningfully expand residential housing stock, requiring the majority of square footage to serve residents rather than transient visitors. This clarification strengthens the law's impact, ensuring incentives drive the creation of homes for those most in need, including low-income families and vulnerable populations.
- 7) **Arguments in Opposition.** None on file.

- 8) **Related Legislation.** SB 92 (Blakespear) requires housing development projects utilizing DBL to comply with a two-thirds housing requirement.
- 9) **Double-Referral.** This bill is double referred to the Assembly Committee on Housing and Community Development, where it passed on a 10-0 vote on April 24, 2025.

REGISTERED SUPPORT / OPPOSITION:

Support

Bird Rock Community Council (Prior Version)
Coronado Democratic Club (Prior Version)
Jennifer Campbell Councilmember, Second District, City of San Diego (Prior Version)
Neighbors for a Better California (Prior Version)
Unite Here International Union, Afl-cio (Prior Version)

Opposition

None on file

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