Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 2186 (Grayson) – As Amended April 18, 2022

SUBJECT: Housing Cost Reduction Incentive Program.

SUMMARY: Creates the Housing Cost Reduction Incentive Program (Program) to reimburse cities and counties for development impact fees that are reduced or deferred for affordable housing developments. Specifically, **this bill**:

1) Defines the following terms:

   a) "Applicant" as a city, county, or city and county.

   b) "NOFA" as a Notice of Funding Availability.

   c) "Qualified housing development" as a rental housing development that is or will be subject to a recorded regulatory agreement with a public entity that requires at least 75% of the units, excluding any manager's units, be affordable to, and occupied by, lower income households, or a homeownership development that will be sold to low- or moderate-income households at an affordable housing cost.

2) Establishes the Program for the purpose of reimbursing applicants for development impact fee reductions provided to qualified housing developments and for the reasonable interest cost associated with development impact fee deferrals.

3) Requires the Department of Housing and Community Development (HCD) to administer the Program.

4) Provides that, upon appropriation by the Legislature, HCD shall do all of the following:

   a) Provide grants to applicants in an amount equal to 50% of the amount of each development impact fee reduction by an applicant for a qualified rental housing development. The fee reduction shall be calculated by subtracting the amount of the total development impact fees charged by the applicant to each qualified housing development from the amount of the total development fees that would have been charged by the applicant to an equivalent project that is not a qualified housing development.

   b) Provide grants to applicants in an amount equal to the interest that accrues at the annual, mid-term Applicable Federal Rate, as determined by the Internal Revenue Service, on development impact fees for qualified housing developments that the applicant defers until, in the case of a rental development, the conversion to permanent financing and, in the case of an ownership development, each unit is sold. An applicant may defer payment of the development impact fees for a longer time, but the grant shall cover interest only for the time period described in this bill.

   c) When funds are made available for the program, issue a NOFA before December 31 of that year to cover each applicant's development impact fee reductions and deferrals during the subsequent year. HCD shall accept applications after the subsequent year.

   d) If for any NOFA the amount of funds made available for the Program is insufficient to provide each eligible applicant with the full grant amount, HCD shall reduce the amount of grant funds awarded to each eligible applicant proportionally.

5) Specifies the type of development impact fees that are eligible for reduction or deferral.

6) Requires an applicant that receives a grant under the Program to deposit those funds into the same fund or account into which it would otherwise deposit the proceeds of a development impact fee imposed on a qualified housing development if that fee had not been reduced or deferred. The applicant shall use grant funds solely for those purposes for which the development impact fee that was reduced or deferred would have been used.

7) Deems grant funds awarded pursuant to this program shall be deemed fees collected as specified.

8) Provides that HCD shall adopt guidelines for the operation of the Program.

EXISTING LAW:

1) Establishes the Mitigation Fee Act that requires a local agency to do all of the following when establishing, increasing, or imposing a fee on a development project:

   a) Identify the purpose of the fee;

   b) Identify the use to which the fee is to be put;

   c) Determine the nexus between the fee's use and the type of development project on which the fee is imposed; and

   d) Determine the nexus between the need for a public facility and the type of development project on which the fee is imposed.

2) Establishes programs administered by HCD addressing such topics as the construction, preservation, and rehabilitation of affordable housing, homelessness, homeownership, infrastructure, and planning.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

1) **Bill Summary.** This bill establishes the Program to be administered by HCD, and requires HCD to provide grants to cities and counties for the reduction or deferral of fees for a qualified housing development. Also, this bill requires an applicant that receives a grant under the Program to use those funds solely for those purposes for which the development impact fee that was reduced or deferred would have been used. Lastly, this bill requires HCD to adopt guidelines to implement the Program. The California Housing Partnership is the sponsor of this bill.

2) **Author's Statement.** According to the author, "An important factor inhibiting the production of affordable housing is the high cost of impact fees that local governments charge new developments to defray the cost of infrastructure. AB 2186 encourages cities and

counties to reduce or defer impact fees for qualified housing developments by creating the Housing Cost Reduction Incentive Program. This Program will reimburse jurisdictions for 50% of the value of fee reductions granted, or the interest accrued on a fee deferral.

"Additionally, under this Program a jurisdiction can choose to defer payment of fees until after the project has been occupied and converted to its permanent financing. The developer would then pay the fees, the Program would reimburse the jurisdiction for any interest accrued during the deferral period, effectively providing the developer with a zero-interest loan. In the event that incentive claims exceed appropriations in any given year, awards to cities and counties would be pro-rated. This will help lower the cost of building new affordable housing and increase affordable housing production to meet the needs of Californian communities."

3) **State Housing Crisis.** California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes contributed to the lack of housing production. Recent reports by the Legislative Analyst's Office and others point to local approval processes as a major factor. They argue that local agencies control most of the decisions about where, when, and how to build new housing, and those agencies are quick to respond to vocal community members that may not want new neighbors. The building industry also points to the review required by the California Environmental Quality Act as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.

4) **Development Impact Fees.** Public infrastructure is necessary to provide services and important amenities to local communities. Such infrastructure includes roads, schools, parks, transit, libraries, and utilities such as power and water. Over the past several decades, local governments have become increasingly responsible for funding the provision of such infrastructure, as federal funding has waned (although the recent passage of the federal Infrastructure Investment and Jobs Act may signal a reversal of that trend).

   While local governments must provide infrastructure, their ability to fund infrastructure and otherwise provide municipal services has been hampered by a series of statewide propositions:

   a) Proposition 13 (1978) capped property tax rates at one percent of assessed value (which only changes upon new construction or when ownership changes) and required two-thirds voter approval for special taxes. The result was that local governments no longer had the ability to raise revenue through increases in property taxes, requiring the use of general taxes to avoid the higher voter threshold for special taxes.

   b) Proposition 62 (1986) required majority voter approval of general taxes. As such, local agencies imposed assessments that were more closely tied to the benefit that an individual property owner receives.

   c) Proposition 218 (1996) required voter approval of parcel taxes, assessments, and property-related fees.

Left with limited options, local governments have turned to other sources of funds for general operations and provision of infrastructure. These include promoting commercial and hotel uses, which simultaneously provide property taxes, sales taxes, and hotel taxes, while simultaneously demanding relatively few services. Residential developments, by contrast, do not directly generate sales or hotel tax revenue, and the new residents demand a wider variety of more intensive services. As a result, California's local governments have faced a fiscal disincentive to plan for and approve housing. This phenomenon is known as the fiscalization of land use.

Local governments recoup the costs of infrastructure through charging development impact fees. Typically, because they cannot impose broad-based taxes without great difficulty, cities and counties set impact fees at a level that covers the full cost of providing new infrastructure to serve the new residents.

5) **Committee Amendment.** Due to concerns raised by the California Special Districts Association, the author has asked the Committee to amend the bill as follows:

50896.8 (a) An applicant that receives a grant under the program shall deposit ***<u>or transfer</u>*** those funds ~~**into**~~ ***<u>to</u>*** the same ***<u>public entity and</u>*** fund or account ~~**into**~~ ***<u>to</u>*** which it would otherwise deposit ***<u>or transfer</u>*** the proceeds of a development impact fee imposed on a qualified housing development if that fee had not been reduced or deferred. The ~~**applicant**~~ ***<u>public entity</u>*** shall use grant funds solely for those purposes for which the development impact fee that was reduced or deferred would have been used.
(b) ***<u>An applicant shall not apply to receive reimbursement for a development impact fee reduction or deferral related to a fee benefitting an independent special district unless the applicant received the written approval of the independent special district for the reduction or deferral on or before the date on which the applicant granted the reduction or deferral.</u>***
<u>(c)</u> Grant funds awarded pursuant to the program shall be deemed to be fees collected for purposes of Section 66006 of the Government Code.

6) **Arguments in Support.** The California Housing Partnership argues, "According to Roadmap Home 2030, California needs to build 1.2 million additional affordable homes over the next ten years in order to meet the needs of low-income households. Yet, California has never produced more than 20,000 new affordable rental homes in any year. One of the many factors inhibiting increased production is the high impact fees local governments charge all new development to address infrastructure needs.

"A 2019 Terner Center at UC Berkeley report found that California's fees are especially high and can exceed $150,000 per unit, not including utility fees. A 2014 California Affordable Housing Cost Study found that development impact fees and lesser permitting fees on average represent 6% of the total cost, net of land, of an affordable housing development. These impact fees are particularly problematic for the builders of affordable homes as they significantly increase the need for scarce public subsidies, money that could otherwise fund additional affordable units.

"AB 2186 encourages cities and counties to waive or reduce impact fees for affordable rental housing developments by reimbursing them 50% of the value of waivers or reductions granted. This bill will significantly reduce the cost of development and allow for available subsidies to support increased production of affordable rental homes. The state will share the burden of lost local fee revenue and provide resources to meet local infrastructure needs."

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

8) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it passed on a 6-0 vote on April 5, 2022.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Partnership [SPONSOR]
AIDS Healthcare Foundation (If Amended)
All Home
Bridge Housing Corporation
California Apartment Association
California Council for Affordable Housing
California Community Builders
California Housing Consortium
EAH Housing
Housing Action Coalition
Merritt Community Capital Corporation
Non-Profit Housing Association of Northern California
Rural Community Assistance Corporation
San Diego Housing Federation
San Joaquin Valley Housing Collaborative
Southern California Association of Non-Profit Housing
SV@Home Action Fund

Opposition

None on file

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