

Date of Hearing: May 5, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 634 (Carrillo) – As Amended April 20, 2021

**SUBJECT:** Density Bonus Law.

**SUMMARY:** Allows a local government to require an affordability period longer than 55 years for units that qualify a developer for a density bonus. Specifically, **this bill:**

- 1) Amends Density Bonus Law (DBL) to allow a local government to require an affordability period of longer than 55 years for any affordable units that qualify a project for a density bonus if all of the following apply:
  - a) The units will be financed without low-income housing tax-credits (LIHTC); and,
  - b) The local government has adopted an inclusionary ordinance requiring a specified percentage of units in residential developments to be affordable.

**EXISTING LAW:**

- 1) Allows a city or county 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.
- 2) Requires each city or county to adopt a general plan for the physical development of the city or county and authorizes the adoption and administration of zoning laws, ordinances, rules, and regulations by cities and counties.
- 3) Under DBL, requires cities and counties to grant a density bonus and award other incentives or concessions to an applicant for a housing development of five or more units that agrees to set aside a minimum number of units that are affordable to households with low, very-low, or moderate income.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Author’s Statement.** According to the author, “In order to ensure longer-term affordability on new housing developments, AB 634 will allow local governments to extend the affordability term for future units created under both local and state housing programs beyond 55 years. This bill will harmonize provisions between the State programs and local inclusionary housing ordinances and add a critical tool to help local governments address the shortage of affordable housing in California.”
- 2) **Density Bonus Projects.** DBL was originally enacted in 1979, to help address a shortage of affordable housing. Over 40 years later, the state faces the same if not worse affordable housing challenges. Density bonus is a tool to encourage the production of affordable

housing by market rate developers, although it is used by developers building 100 percent affordable developments as well. In return for including affordable units in a development, developers are given an increase in density over a city's zoned density, concessions and incentives, and reductions in parking. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units.

All local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of the zoned density in exchange for including extremely low-, very low-, low-, and moderate-income housing. Failure to adopt an ordinance does not relieve a local government from complying with state density bonus law. Local governments must grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least any one of the following:

- a) Ten percent of the total units for lower income households;
- b) Five percent of the total units for very low income households;
- c) A senior citizen housing development or mobilehome park;
- d) Ten percent of the units in a common interest development for moderate income households;
- e) Ten percent of the total units of a housing development for transitional foster youth, disabled veterans, or homeless persons; or,
- f) Twenty percent of the total units for lower income students in a student housing development, as specified.

One-hundred percent affordable developments can receive an enhanced density bonus of up to 80 percent anywhere in the state or unlimited density near transit. Otherwise, the maximum amount of density a development can receive is 50 percent in exchange for including either 15 percent very low-income units or 24 percent low-income units. Developers are not required to take the density bonus, but can access the concessions and incentives and parking reductions provided that they include the required amount of affordable housing.

- 3) **Inclusionary Zoning and DBL.** Local governments adopt inclusionary housing ordinances that require a developer to include a percentage of affordable housing on site or pay an in lieu fee to fund affordable housing elsewhere in the community. If a developer seeks and receives a density bonus, the developer is still required to comply with an inclusionary housing ordinance. DBL requires a developer to record 55-year covenants on the affordable housing units that qualify it for the density bonus. In some cases, local governments' inclusionary housing ordinances require affordability covenants that exceed 55 years.
- 4) **Low Income Housing Tax Credits.** LIHTC are a main source of funding for affordable housing development. LIHTC units must be restricted by 55-year affordability covenants for lower income households. To qualify for LIHTC, federal rules require a project to show that it has funding available for the 55 years. Requiring a longer period of time could cause a project not to qualify.

- 5) **Bill Summary.** This bill would allow a local government to require the units that qualify a developer for the award of the density bonus to be affordable for a period longer than 55 years if the local government has adopted an inclusionary ordinance requiring affordability covenants that exceed 55 years. This bill only allows these ordinances to apply to units that are not financed with LIHTC.

This bill is sponsored by the Los Angeles County Board of Supervisors.

- 6) **Arguments in Support.** According to the Los Angeles County Board of Supervisors, “In order to ensure longer-term affordability on new housing developments, AB 634 will allow local governments that have ordinances that require inclusionary housing set-asides in rental housing developments for more than 55 years to extend the affordability term for future housing units created under both local and State housing programs beyond 55 years.”
- 7) **Arguments in Opposition.** According to Community Catalysts Preserving Local Control, “SB 634 is another example of a few legislators attempting to force-feed state solutions that are better left to local elected officials. Density bonuses benefit developers/investors. They don’t provide housing that is affordable to low-income wage earners.”
- 8) **Double-Referral.** This bill was heard in the Housing and Community Development Committee, where it passed on a 6-2 vote on April 15, 2021.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Los Angeles County Board of Supervisors

##### **Opposition**

Community Catalysts for Local Control

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