Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Susan Talamantes Eggman, Chair
SB 1069 (Wieckowski) – As Amended June 16, 2016

SENATE VOTE: 29-3

SUBJECT: Land use: zoning.

SUMMARY: Makes a number of changes to state law regarding second units. Specifically, **this bill**:

1) Replaces the term "second dwelling unit" with "accessory dwelling unit" in specified sections of housing law.

2) Requires, if a local agency, by ordinance, provides for the creation of accessory dwelling units (ADUs) in single-family and multifamily residential zones, the ordinance to do all of the following:

    a) Designate areas within the jurisdiction of the local agency where ADUs may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of ADUs on traffic flow and public safety;

    b) Impose standards on ADUs that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places; and,

    c) Provide that ADUs do not exceed the allowable density for the lot upon which the ADU is located and that ADUs are a residential use that is consistent with the existing general plan and zoning designation for the lot.

3) Requires a local agency with an ADU ordinance to consider permits within 90 days of submittal of a complete building permit application.

4) Requires a local agency that has not adopted an ADU ordinance to approve or disapprove a permit application ministerially without discretionary review, unless it adopts an ordinance within 90 days, instead of 120 days, after receiving the application.

5) Requires every local agency to ministerially approve the creation of an ADU, if the ADU complies with all of the following:

    a) The unit is not intended for sale separate from the primary residence and may be rented;

    b) The lot is zoned for single-family or multifamily use;

    c) The lot contains an existing single-family dwelling;

d) The ADU is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling;

e) The increase floor area of an attached ADU shall not exceed 50 percent of the existing living area;

f) The total area of floorspace for a detached ADU shall not exceed 1,200 square feet;

g) The requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located;

h) Local building code requirements that apply to detached dwellings, if appropriate; and,

i) Approval by the local health officer where a private sewage disposal system is being used, if required.

6) Allows a local agency to require an applicant for a permit for an ADU to be an owner-occupant or that property to be used for rentals of terms longer than 30 days.

7) Prohibits ADUs being required to provide fire sprinklers, if they are not required for the primary residence.

8) Allows tandem parking on an existing driveway to meet specified parking requirements for an ADU.

9) Prohibits a public agency from imposing parking standards for an ADU in any of the following instances:

a) The ADU is located within ½ mile of public transit or shopping;

b) The ADU is located within an architecturally and historically significant historic district;

c) The ADU is part of the existing primary residence;

d) When on-street parking permits are required but not offered to the occupant of the ADU; or,

e) When there is a car share vehicle located within one block of the ADU.

10) Requires, notwithstanding existing law, a local agency to ministerially approve an application for a building permit to create within a single-family residential zone one ADU per single-family lot, if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Specifies that ADUs shall not be required to provide fire sprinklers, if they are not required for the primary residence.

11) Prohibits ADUS from being considered new residential uses for the purposes of calculating private or public utility connection fees, including water and sewer service.

12) Deletes language from existing law that prohibits local agencies from adopting an ordinance, which totally precludes second units, unless the ordinance contains specified findings.

13) Revises and adds to existing findings and declarations regarding accessory dwelling units.

14) States that no reimbursement is required because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, as specified.

EXISTING LAW:

1) Defines "second unit" as an attached or a detached residential dwelling unit, which provides complete independent living facilities for one or more persons.

2) Provides that a second unit must include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated.

3) Permits a local agency, by ordinance, to provide for the creation of second units in single-family and multifamily residential zones, as specified.

4) Requires, if a local agency adopts a second-unit ordinance, that applications be considered ministerially without discretionary review or a hearing. Additionally, nothing may be construed to require a local government to adopt or amend an ordinance regulating the issuance of variances or special-use permits for second units.

5) Requires a local agency that has not adopted a second-unit ordinance to accept and approve or disapprove the application ministerially, without discretionary review or hearing, within 120 days after receiving the application. Requires every local agency to grant a variance or special permit for the creation of a second unit if the second unit complies with all of the following:

    a) The unit is not intended for sale and may be rented;

    b) The lot is zoned for single-family or multifamily use;

    c) The lot contains an existing single-family dwelling;

    d) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached and located on the same lot as the existing dwelling;

    e) The increased floor area of an attached second unit shall not exceed 30% of the existing living area;

    f) The total area floor space shall not exceed 1,200 square feet;

    g) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located;

    h) Local building code requirements that apply to detached dwellings; and,

i) The unit is approved by the local health officer where a private sewage disposal system is being used.

6) Provides that no local agency may adopt an ordinance that totally precludes second units, unless the ordinance contains findings and acknowledges that the ordinance may limit housing opportunities of the region, and further contains findings from which specific adverse impacts on the public health, safety, and welfare would result.

7) Provides that a local agency may establish maximum and minimum unit size requirements for both attached and detached second units.

8) Establishes the maximum standards that local agencies shall use to evaluate proposed accessory dwelling units on lots zoned for residential use that contain an existing single-family dwelling. No additional standards shall be utilized or imposed, except that a local agency may require an applicant for a permit to be an owner-occupant.

9) Provides that parking requirements shall not exceed one parking space per unit or per bedroom, but that additional parking may be required with a finding that additional parking requirements are directly related to the use of the second unit and consistent with existing neighborhood standards.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

1) **Background.** ADUs, which are referred to in existing law as "second units," are additional living quarters on single-family lots that are independent of the primary dwelling unit. Also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, ADUs are either attached or detached to the primary dwelling unit, and provide complete independent living facilities for one or more persons. This includes permanent provisions for living, sleeping, eating, cooking, and sanitation.

   In 2002, AB 1866 (Wright), Chapter 1062, Statutes of 2002, required local governments to use a ministerial process for approving ADUs, notwithstanding other laws that regulate the issuance of variances or special use permits. A local government may provide for the construction of ADUs by ordinance, and may designate areas where ADUs are allowed, as well as require standards for parking, setback, lot coverage, and maximum size. If a local government has not adopted an ordinance governing ADUs, it must grant a variance or special use permit for the creation of ADUs, if the unit complies with requirements specified in statute, including size and zoning restrictions.

2) **Author's Statement**. According to the author, "Accessory dwellings provide part of the solution to the housing crisis. They are the only source of housing that can be added within a year at an affordable price, in existing developed communities served by infrastructure consistent with SB 375, without public subsidy, and action by the State on a few issues will make this possible for tens of thousands of owners to immediately benefit and help their communities.

"ADUs – referred to in existing law as second units - are additional living quarters on single-family lots that are independent of the primary dwelling unit. These units are inherently affordable - costing as little as $10,000 to $200,000 or 50-90% less to build than conventional infill development. Under existing law, any property owner has the ability to construct an ADU on their property should they meet certain zoning and building requirements. However, a significant number of homeowners are prevented from constructing these units due to the layers of zoning and regulatory barriers such as lot size, setbacks, independent off-street parking, and costly duplicative fees. For example, most local agencies treat accessory dwellings like a "new development" and require sprinklers and new service fees that can double the cost of building the unit itself (adding fee costs of $10,000-75,000/unit) which unreasonably burdens owners trying to add this low-cost, green, infill form of housing.

"Despite the existence of the Second Unit Enabling Act amended and by AB 1866 (2003), studies at UC Berkeley and UCLA demonstrate that taken together many local agency zoning standards plus high fees prevent owners from creating an accessory dwelling, even within an existing structure that has been accepted by the neighborhood. Drawing a random sample of 10% of California's 482 jurisdictions, a team from UC Berkeley found that most jurisdictions impose one or more of three main barriers to construction effectively preventing all but a small number of parcels from ever qualifying for an accessory dwelling regulations including minimum lot size, setbacks, and parking requirements. A similar study led by a team at UCLA found that Los Angeles County jurisdictions similarly had layered regulations that taken together preclude many owners from ever qualifying for a legal accessory dwelling.

"With these barriers to construction, homeowners, especially lower income homeowners who face dire family needs and potential foreclosure if they cannot share with family members or rent space in their homes, build accessory dwellings illegally. A recent study by UT-Austin Professor Jake Wegmann found that 55% of ALL NEW, the housing units produced in the Gateway Cities area of Southeast Los Angeles County between 1980 and 2010, were unpermitted illegal accessory dwellings. With regulations making it challenging to build legally, the study concluded that the majority of housing in the Gateway area is now produced illegally.

"The widespread existence of barriers preventing ADUs and the resulting frequency of illegal accessory dwellings documents the need for the State to intervene to ensure more and safer accessory dwellings. The State must intervene and eliminate barriers to accessory dwelling units which exist despite 14 years of State legislation that require local agencies to allow accessory dwellings. These barriers, including parking, fees, and zoning limits prevent homeowners from legally taking care of their families during times of economic difficulty, and prevent people with too much house from sharing a space on their property [with] those who have too little. The State must remove the most significant barriers and fees so that homeowners can create legal and safe accessory dwellings, inspected and approved under California's rigorous building, fire, and safety codes and bring these onto the tax rolls as legal improved space.

3) **May Revise and Current Legislation on ADUs.** According to the Governor's 2016-17 May Revision:

> *The Administration is also supportive of other initiatives to increase housing supply where such initiatives do not create a state reimbursable mandate. This includes using inventory such as accessory dwelling units (additional living quarters on single-family lots that are independent of the primary dwelling unit)….. Policies can increase the availability of accessory dwelling units with expanded ministerial approval, shortened permitting timelines, reduced duplicative fees, and relaxed parking requirements, consistent with the principles identified by SB 1069 (2016). The state can further increase supply by eliminating overly burdensome requirements for accessory dwelling units identified by AB 2299 (2016), such as passageways to public streets and setbacks of five feet from lot lines.*

As mentioned above, there are several pending bills that aim to increase the availability of ADUs, including the following:

a) AB 2299 (Bloom) requires every city and county, including charter cities, to adopt an ordinance that provides for the creation of second units and repeals the ability of local governments to enact ordinances banning second units. The bill requires the second unit ordinance to designate areas where second units are permitted; impose standards such as parking, lot coverage, setbacks, and architectural review; and, provide that second units do not exceed the allowable density for the lot upon which they are located. The ordinance cannot impose parking standards on second units that are located within: (1) one-half mile of public transit or shopping, or (2) an historic district.

   AB 2299 also prohibits local governments from requiring more than one parking space per unit or bedroom. If a garage, carport, or covered parking structure is demolished to build a second unit and the local agency requires those spaces to be replaced, the replacement spaces can be in any configuration on the lot, including as tandem spaces. In addition, the bill allows local agencies to reduce or eliminate parking requirements for any second unit located within its jurisdiction.

   AB 2299 prohibits local agencies from requiring second units to have a pathway clear to the sky between the second unit and a public street, and second units that are constructed above a garage on an alley cannot be required to have a setback of more than five feet. The bill deems second units to be accessory uses or accessory buildings, if they meet the statutory criteria in current law to automatically receive a variance or special use permit.

   AB 2299 is currently pending in the Senate Governance and Finance Committee.

b) AB 2406 (Thurmond) allows local agencies to adopt an ordinance that authorizes the construction of "junior accessory dwelling units" of 500 square feet or less and includes standards that local agencies may adopt regarding those units. The bill is pending on the Senate Floor.

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

a) **Local Agency Fees:**

i) **Connection Fees and Capacity Charges.** Water retailers and sanitation agencies levy connection fees to ensure that a new development pays for the costs that it imposes on the water system, such as to maintain water pressure for firefighting or expand wastewater treatment capacity. These fees are a key part of these agencies' rate structures – monthly water and sewer bills do not entirely fund an agency's operations. Opponents to the bill note that the cumulative impact of thousands of new units on a water or sewer system could create financial strains for those agencies, necessitating rate hikes on existing customers that have already paid their fair share of the water system's costs.

SB 1069 provides the following language:

Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000). *Accessory dwelling units shall not be considered new residential uses for the purposes of calculating private or public utility connection fees, including water and sewer service.*

Local agencies are authorized, pursuant to Government Code Section 66013 [Chapter 7: Fees for Specific Purposes], to impose fees for water connections or sewer connections, and impose capacity charges, but are prohibited from exceeding the "estimated reasonable cost of providing the service for which the fee or charge is imposed…"

Government Code Section 66013 is not referenced in the provisions of SB 1069.

ii) **Constitutional Issues**. The Association of California Water Agencies notes that "The state constitution and state law, namely Article XIII C, section 1 (e)(2), Article XIII D, section 6(b) and Government Code Section 66013, require that water and wastewater rates and charges be based on cost of service principles. Because of these requirements, an agency may not waive, discount, or establish differential rates that pass on costs associated with obtaining water and/or wastewater service to the general customer base or to other fee payers."

The Committee may wish to consider whether charging some ADUs less for their capacity charges or connection fees could result in violating Proposition 26 (2010). If a local agency's connection fee or capacity charge is challenged, the agency may not be able to meet the burden of proof requirements specified in Prop. 26 – the local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair and reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.

iii) **Mandate Disclaimer.** The bill, in Section 7, contains a mandate disclaimer which specifies that no reimbursement is required by the bill because a local agency has the authority to levy service charges, fees, or assessment sufficient to pay for the program

or level of service mandated by the bill. The Committee may wish to consider whether local agencies will have the authority to levy fees and charges that are sufficient to pay for the requirements in the bill, given the issues raised above.

b) **Impact on Existing Resources**. According to the City of Roseville, in opposition to the bill, "the City is supportive of ADU, and has set aside areas in the last two adopted specific plan areas that allow second units by right. However, the location and number of units allowed was carefully analyzed through the environmental review process and thoughtfully designed to ensure that the City allocated sufficient water supplies, and wastewater and other utility capacity. The plan also included a fiscal analysis to ensure that the City had sufficient funding to provide adequate police, fire, parks and recreation facilities and other services to serve project areas."

Further, the City of Roseville notes that "As a full service city providing water, wastewater, recycled water, solid waste and electric services, we are concerned this measure could result in rate hikes to existing private and public utility customers…The City has secured a surface water allocation sufficient to serve the build out of the City based on a detailed analysis of potential units. If additional units were to be allowed by right, but not subjected to review and if they are not currently included in the City's Urban Water Management Plan, it may impact existing residences especially in a drought situation."

c) **Definitions.** The American Planning Association, California Chapter, notes that it has a "Support, if amended" position on the bill and that "as written the bill doesn't allow an ordinance to require parking to be proved if the ADU '*is located within one-half mile of public transit or shopping.*' They ask that the bill be amended to remove "shopping" and better define "transit" by including the definition of a "major transit stop" as used in AB 744 (Chau), Chapter 699, Statutes of 2015.

5) **Arguments in Support.** Supporters argue that ADUs are the only widely supported approach to get thousands of low cost units on the market fast and that ADUs provide lower cost and low-carbon footprint homes in existing neighborhoods consistent with architectural traditions, and that this bill would further simplify the process of ADU adoption for residents by reducing parking requirements and streamlining the permitting process.

6) **Arguments in Opposition.** Opponents write that the bill removes any local land use flexibility, limits the public engagement process, could result in rate hikes to existing private and public utility customers, and that the cumulative impact of thousands of new units on a water or sewer system could create financial strains for utility agencies on existing customers who have already paid their fair share to be part of that system.

7) **Double-Referral.** This bill was heard in the Housing & Community Development Committee on June 15, 2016, and passed with a 6-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council [SPONSOR]
BRIDGE Housing
American Planning Association, California Chapter (if amended)
AARP
BIA Bay Area
BHV CenterStreet Properties
Bishop Ranch
Blue Shield of California
CalChamber
California Association of Realtors
California Building Industry Association
California Council for Affordable Housing
California Housing Consortium
California Renters Legal Advocacy & Education Fund
California Rural Legal Assistance Foundation
California School Employees Association
Center for Creative Land Recycling
Chase Communications
City of Berkeley, Los Angeles, Oakland
City and County of San Francisco
Colliers International
Comcast
Cushman & Wakefield
East Bay Leadership Council
Eden Housing
Emerald Fund
Facebook
Greenbelt Alliance
Greenberg Traurig LLP
Hallisey & Johnson Law
Hanson Bridgett
HKS Architects
Housing Trust Silicon Valley
Jenifer Hernandez
Kaiser Permanente
Joint Venture Silicon Valley
LA-Más
Lenny, Mendonca, McKinsey & Company
Lilypad Homes
Local Government Commission
MacKenzie Communications, Inc.
Main Street Property Services
LA-Mas
Lennar Urban
Los Angeles Chamber of Commerce

Support (continued)

Manatt, Phelps & Phillips LLP
Marvell
Montezuma Wetlands LLC
Nehemiah Corporation of America
New Avenue Homes
Nossaman LLP
NHA Advisors
Nibbi Brothers Construction
Non-profit Housing Association of Northern California
North Bay Leadership Council
North Lake Tahoe Resort Association
Natural Resources Defense Council
Orange County Business Council
Pier 39
Planning and Conservation League
Plant Construction Company, L.P.
Plumbing-Heating-Cooling Contractors Association
Polaris Pacific
Radiant Brands
Read Investments
Redondo Beach Chamber of Commerce
Reuben, Junius & Rose, LLP
Rhoades Planning Group
Richard Rosenberg
San Francisco Chamber of Commerce
San Francisco Housing Action Coalition
San Mateo County Economic Development Association
SARES.REGIS Group
Silicon Valley Leadership Group
SPUR
SV Angel
SV@Home
Technology Credit Union
Terner Center for Housing Innovation
The Home Depot
The Two Hundred
TMG Partners
United Parcel Service
Virgin America
WEBCORBUILDERS
Western Center on Law and Poverty
Individual letters (3)

Opposition

Association of California Water Agencies
California State Association of Counties
Dublin San Ramon Services District
Cities of:
Angels Camp, Brentwood, Burbank, Cerritos, Clearlake, Cloverdale, Commerce, Camarillo, Daly City, Dublin, Goleta, Laguna Hills, Lake Forest, Lakeport, Lakewood, La Mirada, Lodi, Los Banos, Manteca, Merced, Mill Valley, Morena Valley, Rancho Cucamonga, Rancho Palos Verdes, Redding, Riverbank, Roseville, Placerville, San Carlos, San Clemente, San Rafael, South Gate, Sunnyvale, Tehama, Thousand Oaks, Torrance
League of California Cities
Ventura Council of Governments

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958