

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
SB 290 (Skinner) – As Introduced February 1, 2021

**SENATE VOTE:** 33-4

**SUBJECT:** Density Bonus Law: qualifications for incentives or concessions: student housing for lower income students: moderate-income persons and families: local government constraints.

**SUMMARY:** Makes various changes to Density Bonus Law (DBL), including providing additional benefits to housing developments that include moderate-income rental housing units. Specifically, **this bill:**

- 1) Requires a planning agency to report in the housing element annual progress report (APR) the number of units for lower income students that were included in a student housing development for which a developer received a density bonus.
- 2) Expands the types of for-sale moderate-income housing units that can benefit from a density bonus by deleting the requirement that the units be in a "common interest development."
- 3) Makes a student housing development containing at least 20 percent of the units for lower-income students, as defined, eligible for one incentive or concession.
- 4) Allows moderate-income housing developments that include 40 percent moderate income for-sale housing and are within one-half mile of a major transit stop to receive a parking reduction of 0.5 parking spaces per bedroom.
- 5) Expands the definition of "total units" or "total dwelling units" for the purposes of DBL to include units designated to satisfy an inclusionary zoning requirement of a local agency.
- 6) Makes findings and declarations that it is intent of the Legislature to make modifications to the DBL to further incentivize the construction of very low-, low-, and moderate-income housing units. States that it is further the intent of the Legislature in making these modifications to the DBL to ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of adequate levels of affordable housing. States that the Legislature further intends that these modifications will ensure that DBL creates incentives for the construction of more housing across all areas of the state.

**EXISTING LAW:**

- 1) 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.

- 2) Requires cities and counties 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:** Unknown.

**COMMENTS:**

- 1) **Author's Statement.** According to the author, "California's Density Bonus Law is a unique tool that incentivizes developers to build more affordable housing. However, unintended flaws in the program result in many cities underutilizing the density bonus tool or not using it at all. SB 290 improves and clarifies the state's Density Bonus statute to ensure it achieves its intended outcome of increasing affordable housing production."
- 2) **California 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 have contributed to the lack of housing production. Recent reports by the Legislative Analyst's Office (LAO) and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members that may not want new neighbors. The building industry also points to California Environmental Quality Act (CEQA) review as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.
- 3) **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. DBL 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 DBL. 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.
- 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.

- 4) **Bill Summary.** This bill expands the types of housing options that are eligible for DBL by eliminating a requirement that certain DBL eligible units are a part of a common interest development. This bill also expands the existing parking incentives in DBL to allow a developer that restricts 40 percent of the units in a development to moderate income to reduce parking to 0.5 spaces per bedroom if the development is within one-half mile of transit. Finally, this bill seeks to further incentivize housing for lower-income students by making such a development eligible for one incentive or concession.

5) **Related Legislation.**

AB 1401 (Friedman) prohibits local governments from enforcing minimum automobile parking requirements for developments located close to public transit. AB 1401 is pending in the Senate Governance and Finance Committee.

SB 728 (Hertzberg) authorizes a qualified nonprofit housing organization to purchase a for-sale unit under density bonus law. SB 728 is pending in this committee.

- 6) **Previous Legislation.** SB 1085 (Skinner) of 2020 was almost identical to SB 290. SB 1085 died on concurrence in the Senate.
- 7) **Arguments in Support.** Habitat for Humanity writes in support, “SB 290 seeks to address four barriers that limit density bonus applicability. SB 290 would make the following improvements and clarifications to the state’s density bonus law: first, the bill allows low-income student housing projects to receive up to one incentive. Second, SB 290 aligns the density bonus approval requirements with those in the Housing Accountability Act. Third, it expands the definition of for-sale projects beyond common interest developments, including units that can be sold to low-income families. And lastly, SB 290 adds a parking waiver for housing developments within one-half mile of transit that include 40% moderate-income, for-sale units.”

- 8) **Arguments in Opposition.** The City of Lafayette writes in opposition, “SB 290 prevents municipalities from denying a density bonus to projects that harm the physical environment and restricts project denials to projects that pose a threat to the health and safety of the public. This coupled with the bill’s provisions that allows eligible developers to receive a parking reduction of 0.5 spaces per bedroom, erodes local discretion as it pertains to providing adequate parking for existing residents and visitors and environmental protection.”
- 9) **Double Referral.** This bill is double-referred to the Housing and Community Development Committee, where it passed on an 8-0 vote on June 22, 2021.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Planning Association, California Chapter  
Associated Students of The University of California  
Bay Area Council  
Bridge Housing Corporation  
Calchamber  
California Association of Realtors  
California Building Industry Association  
California Community Builders  
California Yimby  
Casita Coalition  
Chan Zuckerberg Initiative  
Circulate San Diego  
Council of Infill Builders  
Fieldstead and Company, INC.  
Generation Housing  
Greenbelt Alliance  
Habitat for Humanity California  
Habitat for Humanity Greater San Francisco  
Hello Housing  
Hollywood Chamber of Commerce  
Housing Action Coalition  
Lisc San Diego  
Local Government Commission  
Non-profit Housing Association of Northern California  
San Francisco Bay Area Planning and Research Association  
San Jose-evergreen Community College District  
Sand Hill Property Company  
Santa Barbara Women's Political Committee  
Silicon Valley Community Foundation  
South Pasadena Residents for Responsible Growth  
Sv@home  
Sv@home Action Fund  
Terner Center for Housing Innovation At the University of California, Berkeley  
The Two Hundred  
Tmg Partners

Zillow Group

**Opposition**

California Cities for Local Control  
Catalysts  
City of Lafayette  
City of Pleasanton  
Grayburn Avenue Block Club  
Mission Street Neighbors  
New Livable California Db a Livable California  
Pacific Palisades Community Council  
Pleasanton; City of  
Riviera Homeowners Association  
Sustainable Tamalmon te  
West Torrance Homeowners Association

**Analysis Prepared by:** Hank Brady / L. GOV. / (916) 319-3958