

Date of Hearing: June 28, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 35 (Wiener) – As Amended June 20, 2017

SENATE VOTE: 25-12

SUBJECT: Planning and zoning: affordable housing: streamlined approval process.

SUMMARY: Establishes a streamlined, ministerial review process for certain multifamily affordable housing projects that are proposed in local jurisdictions that have not met regional housing needs. Specifically, **this bill:**

- 1) Requires the following additional information to be included in the annual report provided by the planning agency after adoption of the general plan to the legislative body, the Office of Planning and Research (OPR), and the Department of Housing and Community Development (HCD):
 - a) The number of net new units of housing, including both rental housing and housing designated for home ownership, that have been issued an entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing, including both rental housing and housing designated for home ownership, satisfies. Requires the report to, for each income category as specified, distinguish between the number of rental housing units that satisfy each income category and the number of units that are housing designated for home ownership that satisfy each income category. Requires the report to include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier, such as street address, ZIP code, or assessor's parcel number.
- 2) Requires HCD to post the annual progress report on its Internet Web site within a reasonable time of receiving the report.
- 3) Allows a development proponent to submit an application for a development that is subject to the streamlined, ministerial approval process pursuant to 4), below, and not subject to a conditional use permit if the development satisfies all of the following objective planning standards:
 - a) The development is a multifamily housing development that contains two or more residential units;
 - b) The development is located on a site that satisfies both of the following:
 - i) As an urban infill site, as specified; and,
 - ii) Is a site zoned for residential use or residential mixed-use development with at least two-thirds of the square footage designated for residential use;
 - c) If the development contains units that are subsidized, the development proponent already has recorded, or is required by law to record, a land use restriction for the following applicable minimum durations:

- i) 55 years for units that are rented; or,
 - ii) 45 years for units that are owned;
- d) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to Density Bonus Law, satisfies both of the following:
- i) Is located in a locality that HCD has determined, based on the last production report submitted by the locality to HCD, is eligible on the basis that the number of units that have been issued building permits is less than the locality's share of the regional housing needs, by income category, for that reporting period. Specifies that a locality shall remain eligible for four years after the date that HCD has determined the locality was eligible, and, at that date, HCD shall determine, based on the last production report, whether the locality is eligible for another four-year period based on the basis described above. Provides that a locality is deemed eligible if it has not submitted an annual housing element report to HCD for at least two consecutive years before the development submitted an application for approval;
 - ii) The development is subject to a requirement mandating a minimum percentage of below market rate housing based on either of the following:
 - (1) The locality did not submit its latest production report to HCD by the time period required, or that report reflects that there were fewer units of above moderate-income housing approved than were required for the regional housing needs assessment cycle for that year. Requires, if the project contains more than 10 units of housing, the project seeking approval to dedicate a minimum of 10% of the total number of units to housing affordable to households making below 80% of the area median income, including at least 5 % of the total number of units affordable to households making below 50% of the area median income. Provides that if a locality has adopted a local ordinance that required that greater than 10% of the units be dedicated to housing affordable to households making below 80% of the area median income, then that zoning ordinance applies; or,
 - (2) The locality did not submit its latest production report to HCD by the time period required, or that report reflects that there were fewer units of housing affordable to households making below 80% of the area median income that were issued building permits than were required for the regional housing needs assessment cycle for that year, and the project seeking approval dedicates 50% of the total number of units to housing affordable to households making below 80% of the area median income, unless the locality has adopted a local ordinance that requires that greater than 50% of the units be dedicated to housing affordable to households making below 80% of the area median income, in which case that ordinance applies.
- e) The development is consistent with objective zoning standards, including Density Bonus Law, and objective design review standards in effect at the time that the development is submitted to the local government. Defines "objective zoning standards" and "objective design review standards" to mean standards that involve no personal or subjective judgment by a public official.

- f) The development is not located on a site that is any of the following:
- i) A coast zone, as specified;
 - ii) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction;
 - iii) Wetlands, as defined in the United States Fish and Wildlife Service Manual;
 - iv) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection, as specified, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection, as specified. Specifies that this does not apply to sites excluded from the specified hazard zones by a local agency, as specified, or sites that have adopted sufficient fire hazard mitigation measures as may be determined by their local agency with land use authority;
 - v) A hazardous waste site that is listed pursuant to existing law or a hazardous waste site designated by the Department of Toxic Substances Control, unless the Department has cleared the site for residential use or residential mixed uses;
 - vi) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission, as specified, and by any local building department, as specified;
 - vii) Within a flood plain as determined by maps promulgated by the Federal Emergency Management Agency (FEMA), unless the development has been issued a flood plain development permit, as specified;
 - viii) Within a floodway as determined by maps promulgated by FEMA, unless the development has received a no-rise certification in accordance with existing law;
 - ix) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act, habitat conservation plan pursuant to the federal Endangered Species Act of 1973, or other adopted natural resource protection plan;
 - x) Occupied habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act, as specified; or,
 - xi) Lands under conservation easement.

- g) The development is not located on a site where any of the following apply:
- i) The development would require the demolition of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power, or housing that has been occupied by tenants within the past 10 years;
 - ii) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponents submits an application; or,
 - iii) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.
- h) The development proponent has certified that one of the following is true:
- i) The project is a public work for purposes of Chapter 1 of Part 7 of Division 2 of the Labor Code; or,
 - ii) If the project is not a public work, that all construction workers employed in the execution of the project will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations, as specified. If the development is subject to these provisions, then all of the following shall apply:
 - (1) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work;
 - (2) Contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages;
 - (3) Except as provided in 4), below, the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment, which may be reviewed as specified within 18 months after the completion of the project, or by an underpaid worker through an administrative complaint or civil action. Provides that if a civil wage and penalty assessment is issued, the contractor, subcontractor and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages, as specified;
 - (4) Provides that 3), above, shall not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure.
 - (5) The requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if

otherwise proved in a bona fide collective bargaining agreement to cover the worker, as specified;

- iii) For developments that are not 100 % subsidized affordable housing and are larger than ____ (unspecified) units, that a skilled and trained workforce shall be used to complete the project, as specified.
 - i) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act, as specified.
- 4) Specifies, if a local government determines that a development submitted pursuant to the bill's provisions is in conflict with any of the objective planning standards listed in 3), above, that it shall provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:
- a) Within 60 days of submittal of the development to the local government if the development contains 150 or fewer housing units; or,
 - b) Within 90 days of submittal of the development to the local government if the development contains more than 150 housing units.
- 5) Provides that the development shall be deemed to satisfy the objective planning standards listed in 3), above, if the local government fails to provide the required documentation pursuant to 4), above.
- 6) Provides that any design review or public oversight of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate. Requires that design review or public oversight to be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. Provides that design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:
- a) Within 90 days of submittal of the development to the local government if the development contains 150 or fewer housing units;
 - b) Within 180 days of submittal of the development to the local government if the development contains more than 150 housing units.
- 7) Prohibits a local government, whether or not it has adopted an ordinance governing parking requirements in multifamily developments, from imposing parking standards for a streamlined development that was approved in any of the following instances:
- a) The development is located within one-half mile of public transit;

- b) The development is located within an architecturally and historically significant historic district;
 - c) When on-street parking permits are required but not offered to the occupants of the development; of,
 - d) When there is a car share vehicle located within one block of the development.
- 8) Provides, if the development does not fall within any of the categories described in 7), above, the local government shall not impose parking requirements for streamlined developments approved that exceed one parking space per unit.
- 9) Provides that if a local government approves a development then that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50% of the units are affordable to households making below 80% of the area median income.
- 10) Provides that if a local government approves a development and the project does not include 50% of the units affordable to households making below 90% of the area median income, that approval shall automatically expire after three years except that a project may receive a one-time, one-year extension if the project proponent can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.
- 11) Prohibits a local government from adopting any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval.
- 12) Defines the following terms:
- a) “Development proponent” to mean the developer who submits an application for streamlined approval;
 - b) “Production report” means the information reported pursuant to existing law requiring the planning agency to provide an annual report on the progress of the housing element; and,
 - c) “Subsidized” to mean units that are price or rent restricted such that the units are permanently affordable to households meeting the definitions of very low and lower income, as defined.
- 13) Updates findings and declarations that specifically list the reforms and incentives to facilitate and expedite construction of affordable housing to include that that these reforms also facilitate and expedite *the approval* of affordable housing. Adds streamlining housing approvals during a housing shortage to the list.
- 14) Finds and declares that ensuring access to affordable housing is a matter of statewide concern, and not a municipal affair, and therefore is applicable to a charter city, charter county, and a charter city and county.

- 15) Declares that each provision of this measure is a material and integral part of this measure, and the provisions of this measure are not severable. Provides that if any provision of this measure or its application is held invalid, then this entire measure shall be null and void.
- 16) Provides that no reimbursement is required because a local agency or school district has the authority to levy service charges, fees, or assessment sufficient to pay for the program or level of service mandated by this act.

EXISTING LAW:

- 1) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.
- 2) Requires the board of zoning adjustment or zoning administrator to hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance.
- 3) Requires cities and counties, to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.
- 4) Requires the housing element to identify adequate sites for housing and to make adequate provision for the existing and projected needs of all economic segments of the community.
- 5) Defines “infill site” to mean a site in an urbanized area that meets either of the following criteria:
 - a) The site has not been previously developed for urban uses and both of the following apply:
 - i) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses; and,
 - ii) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.
 - (b) The site has been previously developed for qualified urban uses.

FISCAL EFFECT: Unknown. According to the Senate Appropriations Committee, an earlier version of the bill (April 4, 2017), would have the following fiscal effect:

- 1) Annual staffing costs of approximately \$400,000 to HCD to update regulations and provide technical assistance related to local agency annual progress reports, reviewing the reports, and posting those reports online, as well as additional staff time for review and analysis of regional housing needs assessment data. (General Fund)
- 2) Unknown local costs to establish streamlined project review processes, make determinations and conduct expedited design reviews, and include additional information in annual progress reports. These costs are not state-reimbursable because local agencies have general authority to charge planning and permitting fees to cover their administrative expenses.

COMMENTS:

- 1) **2016 By-Right Proposal and January 2017 Budget Summary.** In May 2016, the Governor introduced trailer bill language designed to streamline approval processes by broadening eligibility for by-right, ministerial land use approvals for multifamily infill housing developments that include affordable housing. Specifically, that proposal applied to projects that were within a “transit priority area” (defined as within ½ a mile of a major transit stop) and had at least 10% of units reserved for low-income households or 5% of units reserved for very low-income households. It also applied to projects that are not in a “transit priority area,” in which at least 20% of the units are reserved for individuals making less than 80% of the area median income. A local government would not have been able to require a conditional use permit, planned unit development permit, or other discretionary local government review or approval for qualifying developments that include one of the affordable housing components noted above, provided they are consistent with objective general plan and zoning standards and are, where applicable, subject to mitigating measures to address potential environmental harm.

The Governor’s proposal sought to address California’s housing supply problem by expediting approval processes at the local level for predominately market rate housing developments. The proposal was met with opposition from labor, affordable housing advocates, local governments, and the environmental community, and was never introduced into a bill.

The Governor’s January 2017 Budget Summary included the following principles for housing:

The Administration is committed to working with the Legislature on the development of a legislative package to further address the state’s housing shortage and affordability pressures. Such a package should include additional reforms and any new funding should not rely on the General Fund. Because it is counterproductive to develop a new funding source for affordable housing under a system that increases time, risk, and cost, the Administration puts forth the following principles:

- **Streamline Housing Construction** — Reduce local barriers to limit delays and duplicative reviews, maximize the impact of all public investments, and temper rents through housing supply increases.

- Lower Per-Unit Costs — Reduce permit and construction policies that drive up unit costs.
- Production Incentives — Those jurisdictions that meet or exceed housing goals, including affordable housing, should be rewarded with funding and other regulatory benefits. Those jurisdictions that do not build enough to increase production should be encouraged by tying housing construction to other infrastructure-related investments.
- Accountability and Enforcement — Compliance with existing laws — such as the housing element — should be strengthened.
- No Impact to the General Fund — No new costs, or cost pressures, can be added to the state’s General Fund, if new funding commitments are to be considered.
- Any permanent source of funding should be connected to these other reforms.

- 2) **Bill Summary.** This bill requires a city, including a charter city, county, or city and county, to annually submit a report to HCD that includes the number of net new units of housing that have been issued an entitlement, building permit, or a certificate of occupancy thus far in the housing element cycle, and the income category that each unit satisfies. Additionally, this bill creates a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers, provided that the development is located on a site that is both on an urban infill site and zoned for residential use or residential mixed-use, as specified.

The ministerial streamlining process contained in the bill would only occur in specified instances: (1) if the development proponent asks for streamlining; (2) if the locality did not submit its latest production report, or that report reflects fewer units of housing required for the RHNA cycle for that year, as specified; (3) and that development meets a number of objective zoning standards and objective design review standards. The bill also specifies that a development cannot be on a site or lands that are any of the following: a coastal zone, prime farmland or farmland of statewide importance, wetlands, a hazardous waste site, a site identified for conservation in an adopted natural community conservation plan, occupied habitat for protected species, land under conservation easement, development in a very high fire hazard severity zone, delineated earthquake fault zone, flood plain or floodway.

The bill requires the city or county, if it determines that a development conflicts with any of the standards, to provide the proponent with written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts, within specified time frames. If the city or county fails to provide the required documentation by the timeline established in the bill, the development is deemed to satisfy the standards under the bill. The bill is an author-sponsored measure.

- 3) **Author’s Statement.** According to the author, “For decades, California has failed to create enough housing, at all income levels, for our growing population. We have placed endless barriers in the way of new housing. According to the Legislative Analyst, California needs to produce approximately 180,000 units of housing per year to keep up with population growth – right now, we produce less than half that amount. The extreme cost of housing in many parts of California is harming our economy, our environment, and the health and quality of life of far too many people. When we don't have enough housing, low income and middle income residents are hit the hardest, with increased evictions and an inability to find suitable

housing. While there are various reasons for this shortage, including zoning restrictions, one aspect of the problem is the significant length of time it takes to approve housing even if the project is entirely within zoning. It should not take years to approve a zoning-compliant housing development.

“SB 35 will result in more housing at all income levels, good-paying jobs to build that housing, and more accountability in creating the new homes our residents so badly need. Under SB 35, if cities aren’t on track to meet their RHNA goals, then approval of zoning-compliant projects will be streamlined, if they meet objective zoning, affordability, and environmental criteria, and if the projects meet rigorous labor standards dependent on the size of the project. Under SB 35, all cities and counties are required to submit their progress on housing production to the California Department of Housing and Community Development, and HCD is required to make that data easily available to the public. Indeed, many cities aren’t even required to report their progress to the state under current law, and the state doesn’t do a great job reporting out statewide RHNA progress.

“In combination with other bills pending in the Legislature - particularly affordable housing funding bills and bills to require better compliance with Housing Element requirements - SB 35 will help create more housing for people of all income levels. It deserves our support.”

- 4) **Policy Considerations.** The Committee may wish to consider the following:
- a) **No Environmental Review.** Opponents of the bill notes that the streamlining process contained in the bill will bypass environmental review, potentially leading to increases in air and water pollution, and preventing people from having access to information about negative impacts to their health. Sierra Club California notes that “numerous exemptions from CEQA existing for housing projects...these include efforts to provide a truncated process for development in transit priority areas, efforts to allow for projects to tier onto higher level planning documents, and exemptions for affordable and infill development.” Additionally, Sierra Club California notes that CEQA requires projects to disclose their environmental impacts and mitigate those impacts, which results in a public process so that people can debate projects and make sure that developers improve them or bear the costs of the burdens they place on communities.
 - b) **Link to RHNA.** The premise behind the streamlining process in the bill links to lack of housing production at the local level, which is measured on an annual basis in the bill. Opponents point to the fact that the RHNA process is an eight-year cycle, not one-year, and that while local jurisdictions can facilitate and incentivize development, they do not control housing construction or economic market conditions.

The Committee may wish to consider whether it makes more sense to measure the “progress” in meeting RHNA for each jurisdiction halfway through the RHNA cycle, and at the end of each RHNA cycle, rather than on annual basis. Additionally, the Committee may wish to consider how this bill impacts current RHNA cycles, and whether jurisdictions should be penalized for prior year actions on housing development approvals if the bill is signed into law.

- c) **Amendments Proposed by Opposition.** Many groups in opposition have proposed amendments to the bill since the bill's introduction. These include, but are not limited to, the following suggestions:
- i) Inclusion of a safe harbor provision for low income communities where development is already "hot" and communities are already grappling with gentrification and displacement pressures.
 - ii) Inclusion of a higher affordable housing requirement above what is already required locally in exchange for projects awarded with state-imposed by right approval.
 - iii) Inclusion of a "use it or lose it" time limit on how long by-right approval lasts before a development must start building the project.
 - iv) Expediting entitlement and environmental review instead of the elimination of both.
 - v) Include an effective date for the bill that is several years out.
 - vi) Inclusion of careful review to ensure critical life and fire safety issues are adequately addressed.
 - vii) Using the term "secured local entitlement approvals" in the requirements for a city or county to include in its production report, which then would become the trigger for streamlining, should a city or county not meet its share of the RHNA.
 - viii) Allowing streamlining on a property that has previously been subject to environmental review, and inclusion of public comment at the zoning or specific plan state of entitlement.
- 5) **Committee Amendments.** To address the RHNA issue above, the Committee may wish to ask the author to take amendments that would ensure that the production report is not reviewed on an annual basis by HCD to determine whether a jurisdiction meets the triggers of the streamlining, and instead on a 4-year basis (halfway through the RHNA cycle, and again at the end of the RHNA cycle).
- 6) **Arguments in Support.** Supporters argue that this bill creates a responsible streamlining process that differentiates the production shortages among varying levels of households income, and that the bill balances local control with residents' housing needs, thus bolstering the economic livelihood of all Californians.
- 7) **Arguments in Opposition.** Opponents believe that the bill ignores the significant barrier and disincentives that constrain the production of housing, such as economic market conditions, lack of funding or subsidies, and challenges for developers, while also subverting the local autonomy and the public hearing process.
- 8) **Double-referral.** This bill is double-referred to the Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA
American Planning Association, California Chapter (if amended)
Apartment Association of Greater Los Angeles
Bay Area Council (if amended)
Bridge Housing
California Apartment Association
California Asian Pacific Islander Chamber of Commerce
California Council for Affordable Housing
California Association of Realtors
California League of Conservation Voters (if amended)
California Renters Legal Advocacy & Education Fund
California Rural Legal Assistance Foundation (if amended)
Council of Infill Builders (if amended)
East Bay Forward
Grow the Richmond
Housing California (if amended)
League of California Community Foundations
Local Government Commission
Mercy Housing
Mission Housing Development Corporation
Los Angeles Chamber of Commerce
Napa County Board of Supervisors
Natural Resources Defense Council (if amended)
Progress Noe Valley
Public Advocates (if amended)
San Francisco Chamber of Commerce
San Francisco Housing Action Coalition
San Francisco YIMBY Party
Santa Barbara Rental Property Association
Silicon Valley Community Foundation
Silicon Valley Leadership Group
SPUR
State Building and Construction Trades Council
SV@Home
U.S. Green Building Council
Western Center on Law & Poverty (if amended)
YIMBY Action

Opposition

Council of Community Housing Organizations (unless amended)
County of Los Angeles (unless amended)
California Professional Firefighters
Cities of Glendale, Murrieta, Pasadena, San Marcos, Santa Rosa, Vallejo
League of California Cities
Little Tokyo Service Center (unless amended)
San Francisco Latino Democratic Club (unless amended)
Senior & Disability Action (unless amended)
Sierra Club California
Tenants Together (unless amended)

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