Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 728 (Hertzberg) – As Amended April 15, 2021

SENATE VOTE: 39-0

SUBJECT: Density Bonus Law: purchase of density bonus units by nonprofit housing organizations.

SUMMARY: Allows a qualified nonprofit housing organization to purchase a for-sale unit under density bonus law (DBL). Specifically, **this bill**:

1) Requires an applicant for a density bonus to agree to ensure, and the city, county, or city and county to ensure, that a for-sale unit that qualified the applicant for the award of the density bonus meets either of the following:

    a) The unit is initially occupied by a person or family of very low, low, or moderate income and offered at an affordable housing cost, as specified in existing law.

    b) The unit is purchased by a qualified nonprofit housing corporation pursuant a recorded contract that includes the following:

        i) A repurchase option that requires a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser.

        ii) An equity sharing agreement.

        iii) Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner-occupied housing units and will be sold or resold to only persons of very low, low, or moderate income, as specified in existing law.

2) Provides that the recorded contract referenced in 1) b), above, must also satisfy all of the following, pursuant to specified provisions of existing law:

    a) The contract is with a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under specified state law for properties intended to be sold to low-income families who participate in a special no-interest loan program.

    b) The contract restricts the use of the land for at least 30 years to owner-occupied housing available at affordable housing cost in accordance with Section 50052.5 of the Health and Safety Code.

c) The contract includes a deed of trust on the property in favor of the nonprofit corporation to ensure compliance with the terms of the program, which has no value unless the owner fails to comply with the covenants and restrictions of the terms of the home sale.

d) The local housing authority or an equivalent agency, or, if none exists, the city attorney or county counsel, has made a finding that the long-term deed restrictions in the contract serve a public purpose.

e) The contract is recorded and provided to the assessor.

3) Defines, for the purposes of this bill, “qualified nonprofit housing corporation” as a nonprofit housing corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

4) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

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 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: According to the Senate Appropriations Committee:

- The Department of Housing and Community Development (HCD) estimates costs of approximately $85,000 annually for 0.5 PY of staff time to update guidance documents for the Density Bonus Law, develop and issue technical assistance documents, provide technical assistance and outreach education, respond to requests for interpretation, and conduct accountability and enforcement activities. (General Fund)

- Unknown, but likely minor local costs to make any changes to local planning and permitting processes to account for the new authority provided under the Density Bonus Law, as specified. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates. (local funds).

COMMENTS:

1) **Bill Summary**. This bill allows a qualified nonprofit housing organization to purchase a for-sale unit under DBL pursuant to a recorded contract that meets specified requirements under existing law and includes all of the following:

   a) A repurchase option that requires a subsequent purchaser of the property.

   b) An equity sharing agreement.

   c) Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner occupied housing units and will be sold or resold to only persons of very low-, low-, or moderate-income.

   For purposes of the bill, a "qualified nonprofit housing corporation" is a specified nonprofit that has received a welfare exemption for properties intended to be sold to low-income families who participate in a special no-interest loan program.

   This bill is sponsored by Habitat for Humanity California.

2) **Author's Statement**. According to the author, "Expanding homeownership opportunities in California is the single most effective way to bridge the wealth gap and lift families out of the cycle of poverty in our state. Yet, as home prices continue to rise, many renters of all income levels – but especially those of low-and moderate-income – view homeownership as an unattainable goal. Truly addressing our state's homeownership crisis will, without a doubt, require both significant investment and bold, new ideas. It also demands us to reevaluate our existing laws and programs aimed towards increasing the availability of housing at large. One such opportunity is SB 728, which amends the state's Density Bonus Law to ensure non-profits specifically dedicated to providing homeownership solutions are able to purchase for sale-units in an approved development project."

3) **Background**. 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.

4) **Density Bonus**. 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.

5) **Ownership Models Under DBL**. A developer can request a density bonus to build for-sale units, which must be sold initially at an affordable price to moderate income purchasers. These sales are also subject to an equity sharing agreement that allows the original owner to retain a portion of the equity, while a portion goes to the local government to reinvest in affordable housing.

According to the sponsor, there was a specific situation in which a developer was interested in using DBL to produce affordable owner-occupied units that Habitat for Humanity would then buy, take possession of to apply an affordability covenant, and sell to a qualified family. This process would allow the developer to sell the units without having to expend additional resources to find qualified buyers and ensure that affordable units remain affordable. During negotiations, however, the city attorney prohibited Habitat for Humanity from acquiring the units because they were not a "qualified buyer" under DBL. Ultimately, Habitat for Humanity was unable to acquire the units.

This bill authorizes qualified nonprofit housing organizations to purchase affordable units and maintain their affordability, as an alternative to ensuring the initial occupant of a for-sale unit meets specified income requirements under DBL. According to the sponsor, several other cities and local Habitat for Humanity affiliates would be interested in utilizing this new authorization should it be become law.

6) **Surplus Land Act (SLA)**. If land is no longer needed or is not being held for exchange, a local agency must follow certain procedures prior to disposal of "surplus" land. The intent behind the disposal procedures is to promote the use of surplus land towards affordable housing, parks and recreation purposes, open-space purposes, and transit-oriented development. The disposal procedures provide a Right of First Refusal to entities agreeing to use the land for affordable housing, among other things. When a site is developed for affordable housing, a developer can sell the units at an affordable price to lower and moderate income buyers.

   The SLA cross references DBL, which only allows developers to sell the units subject to an equity sharing agreement and does not allow for the Habitat for Humanity model. The sponsor has identified a surplus site in the City of Folsom that the city would like to sell to the local Habitat for Humanity affiliate to develop into ownership units. However, the city won't approve the sale because the statute requires an equity sharing agreement that does not include Habitat's model. This bill should address that concern by amending DBL to add the Habitat for Humanity model of ownership, which allows a non-profit to retain ownership of the home when it is sold by a buyer and sell it to a new buyer at an affordable cost.

7) **State Mandate**. This bill is keyed a state mandate, which means the state could be required to reimburse local agencies and school districts for implementing the bill's provisions if the Commission on State Mandates determines that the bill contains costs mandated by the state.

8) **Related Legislation**. SB 290 (Skinner) makes various changes to DBL, including providing additional benefits to housing developments that include moderate-income rental housing units. SB 290 is pending in this committee.

9) **Previous Legislation**. SB 1085 (Skinner) of 2020 was almost identical to SB 290. SB 1085 died on concurrence in the Senate.

10) **Arguments in Support**. Habitat for Humanity California, sponsor of this bill, writes, "While the DBL has been amended multiple times in response to evolving housing conditions, California remains the epicenter of the American housing crisis. One in five California households spend half or more of their income on housing, the median cost of a home is more than two times the national average, and the state ranks 49th in the nation with a homeownership rate of 54 percent. Homeownership is a crucial foundation for helping low-income families find a path out of poverty, yet as home prices continue to rise, many renters of all income levels – but especially those of low-and moderate- income – view homeownership as an unattainable goal.

"SB 728 authorizes developers and local governments, as an alternative to ensuring the initial concept of a for-sale unit meets specified income requirements under the DBL, to ensure qualified nonprofit housing organizations can purchase the unit as well. This will allow nonprofits dedicated to providing homeownership opportunities for families with limited-income the opportunity to serve communities through the DBL. This will also require purchase contracts to include an affordability restriction, an equity sharing agreement, and a repurchase option requiring a subsequent purchaser to offer the nonprofit the right of first refusal to repurchase the property. SB 728 further ensures the individual density bonus for owner-occupied or for-sale units remains affordable over time."

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

12) **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

Habitat for Humanity California [SPONSOR]
Aids Healthcare Foundation
American Planning Association, California Chapter
City of San Diego
Housing Action Coalition
Montecito Association
San Francisco Bay Area Planning and Urban Research Association (SPUR)

Opposition

None on file

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958