

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 765 (Wiener) – As Amended June 18, 2018

SENATE VOTE: Not relevant

SUBJECT: Planning and zoning: streamlined approval process.

SUMMARY: Clarifies, revises and expands provisions of SB 35 (Wiener), Chapter 366, Statutes of 2017. Specifically, **this bill**:

- 1) Clarifies that a development project that meets specified objective planning standards is not subject to a conditional use permit, any other discretionary approval from the planning commission or any other equivalent board or commission responsible for the review of development projects, and are subject to the ministerial approval process provided for in the bill.
- 2) Specifies that nonresidential portions of a mixed use project in which two-thirds of the square footage of the development is for residential use is also subject to the streamlined ministerial approval process, including any additional residential square footage granted by a density bonus.
- 3) Deletes the requirement that the Department of Housing and Community Development (HCD) determines if a locality is subject to streamlining based on whether or not the number of building permits is less than the locality's share of the regional housing needs (RHNA) by income category for the reporting period.
- 4) Provides that if a locality issues building permits for fewer units of housing affordable to households making between 80% and 120% of area median income (AMI) than were required for the RHNA cycle for the last four year reporting period, a project that dedicates 50% of the total number of units of housing for households making 120% of AMI or below can access streamlining.
- 5) Provides that the receipt of a density bonus does not constitute a valid basis to find a housing development inconsistent with objective zoning standards or objective design review standards and therefore not eligible for streamlining.
- 6) States the intent of the Legislature that the streamlining authorized by this bill should be interrupted and implemented in a manner to afford the fullest possible weight to the interest of and the approval and provision of the highest number of housing units.
- 7) Clarifies the Federal Emergency Management Agency (FEMA) standards by which a flood plain may or may not be subject to ministerial approval.
- 8) Provides that developments in which 100% of the residential portion of the development is affordable to low-income households that also include other non-residential uses are required to pay prevailing wage but not hire a skilled and trained workforce.

- 9) Restates existing law that a development that receives low-income housing tax credits and is subject to prevailing wage or a development that is subject to prevailing wage and skilled and trained workforce and the development involves a subdivision of a parcel, than it is subject to streamlining and ministerial approval.
- 10) Provides that a local government can only impose objective planning standards that are in effect at the time the original submittal of an application for streamlining.
- 11) Requires local governments to determine the objective planning standards that a development conflicts with based on the "original" submittal of the development application.
- 12) Provides that a change in the zoning ordinance or general land use designation subsequent to the date an application was originally submitted shall not constitute a valid basis to disprove a project.
- 13) Provides that any design review that is enforceable on a development applying for streamlining shall be interpreted and implemented in a manner to afford the fullest possible weight and to provide for the highest number of housing units.
- 14) Clarifies that parking standards provisions contained in SB 35 are applicable to automobiles.
- 15) Provides the California Environmental Quality Act (CEQA) does not apply to actions taken by a state agency or local government to lease, convey, or encumber land owned by the local government, to facilitate the lease conveyance or encumbrance of land owned by the local government, to provide financial assistance to the development that received streamlined approval that is used for housing for very low-, low-, or moderate-income households.
- 16) Defines "development" to mean a residential or mixed-income project as described in the application submitted by the development proponent that includes any density or concessions, incentives or waivers of the development standards pursuant to state Density Bonus Law.
- 17) Defines "state agency" to mean every state office, officer, department, division, bureau, board, and commission but does not include the California State University or the University of California.

EXISTING LAW:

- 1) 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.
- 2) 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.
- 3) 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, until 2026, pursuant to SB 35 (Wiener).

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **2017 Housing Package.** The 15-bill housing package signed into law by Governor Brown in 2017, included bills that provided critical funding for new affordable homes, accelerated development to increase housing supply, held cities and counties accountable for addressing housing needs in their communities, and created opportunities for new affordable homes and preserve existing affordable homes. Some of the measures were urgency measures, and took immediate effect, while most took effect on January 1, 2018.

SB 35. One of the bills contained in the housing package was SB 35 (Wiener), Chapter 366, Statutes of 2017. SB 35 established a streamlined approval process for infill projects with two or more residential units in cities and counties that have failed to produce sufficient housing to meet their RHNA numbers. The streamlined approval process requires some level of affordable housing to be included in the housing development. To receive the streamlined process for housing developments, the developer must demonstrate that the development meets a number of requirements. Local governments must provide written documentation to the developer if there is a failure to meet the specifications for streamlined approval, within specified periods of time. If the city or county does not meet those deadlines, the development shall be deemed to satisfy the requirements for streamlined approval.

SB 35 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 additionally contained requirements for prevailing wage and skilled and trained workforce, based on certain conditions.

- 2) **Bill Summary.** This bill contains some provisions that intend to clarify provisions of SB 35 (Wiener), but also contains policy changes that expand the scope of SB 35, as it was contemplated in 2017 by the Legislature. The most significant changes are the following provisions:
 - a) The bill specifies that nonresidential portions of a mixed use project in which two-thirds of the square footage of the development is for residential use, are also subject to the streamlined ministerial approval process, including any additional residential square footage granted by a density bonus;
 - b) This bill deletes the requirement that HCD determine if a locality is subject to streamlining based on whether or not the number of building permits is less than the locality's share of the RHNA by income category for the reporting period; and,
 - c) This bill provides that if a locality issues building permits for fewer units of housing affordable to households making between 80% and 120% of AMI than were required for the RHNA cycle for the last four year reporting period, a project that dedicates 50% of the total number of units of housing for households making 120% of AMI or below can access streamlining, thereby expanding the streamlining to moderate income.

This bill is sponsored by the author.

- 3) **Author's Statement.** According to the author, "The Legislature's 2017 Housing Package, including my streamlining bill, SB 35, was a meaningful down payment on addressing our state's crippling housing shortage. As SB 35 is being implemented and the Legislature explores new ways to build on the progress from last year, it is incumbent upon authors to fix prior deficiencies or ambiguities in order to shield potential projects from undue interpretation or litigation counter to the spirit of the policy. SB 765 is a clean-up bill to SB 35. It includes a number of provisions that clarify implementation details, and also allow for middle-income workforce housing to be streamlined in communities where there is a shortage of middle-income workforce housing."
- 4) **Policy Considerations.** The Committee may wish to consider the following issues:
 - a) **SB 35 Moderate-Income Expansion.** Existing law requires HCD to determine when a locality is subject to the streamlining and ministerial approval process in SB 35 (Wiener) based on the number of units permitted as reported in the annual production report that local governments submit each year as part of housing elements. Streamlining can be turned on at the beginning of the term of housing element (generally eight years but in some cases five) and turned off half way through if a local government is permitting enough units to meet a proportional share of the RNHA at all income levels (low, moderate, and above moderate income). If a local government is not meeting its above moderate and its lower income, then a development must only dedicate 10% of the units in the development and receive streamlining. If the jurisdiction is meeting its above-moderate income but not its lower income, then developments must dedicate 50% of the units for lower income to have access to streamlining.

Under this bill, if a local government has not issued enough permits to meet its moderate-income RHNA (between 80% and 120% of AMI) for the reporting period and dedicates 50% to moderate income, then the developer could access the streamlining process provided for under SB 35 (Wiener). This proposal raises several policy concerns. Based on housing element production reports, most jurisdictions are not meeting their moderate income. This is likely because most moderate-income units are not deed-restricted, so local governments cannot differentiate them from above-moderate income or market rate units. Under this bill, developers could choose to dedicate 50% of the units in a development to moderate income, rather than low income to access streamlining. In many markets, outside of high cost areas, moderate income is market rate, so in return for the benefits afforded by streamlining, the community would be receiving no lower-income units. This bill does not require that the moderate-income units be deed restricted.

- c) **Mixed-use and Commercial Streamlining.** Under the bill, the nonresidential portions of an eligible mixed-use project would also be subject to streamlined ministerial approval. Opponents argue that this is a major change in policy and would be difficult for cities and counties, as commercial development often involves more variables than residential development and is consequently harder to address through a ministerial process.

- d) **SB 850 (Committee on Budget and Fiscal Review).** This bill makes several changes that are duplicative or in conflict with SB 850, which passed the Assembly Floor on June 14, 2018.
 - e) **More Substantive than Clean-Up.** Public Advocates and PolicyLink, in opposition to the bill, note that “SB 35 was a tightly negotiated bill that balanced input from dozens of different stakeholders.” Many of the opponents argue that the changes proposed in this bill go well beyond “clean-up” of SB 35, and instead substantively alter the adopted statute.
 - f) **Process and Timing.** Opponents are concerned about the timing and procedural aspects of the bill, noting that it was a gut-and-amend in the Assembly and not in print until June 15, 2018, with further amendments on June 18th, and will be heard in both the Housing and Community Development Committee and this Committee on the same day. They argue that this artificially compressed schedule leaves almost no time for thoughtful consideration of the bill by the many stakeholders that it would impact. Opponents ask for the Legislature to suspend consideration of SB 765 and instead work with stakeholders on SB 35 clean-up through the regular legislative timeline next session.
- 5) **Committee Amendments.** In order to address some of the policy considerations raised above, the Committee may wish to consider reinstating the role of HCD in determining whether a locality is subject to streamlining (thereby reverting to existing law), and to striking all of the other provisions in the bill, except for the following provisions:
- a) Clarify that parking standards provisions contained in SB 35 are applicable to automobiles;
 - b) Provide that CEQA does not apply to actions taken by a state agency or local government to lease, convey, or encumber land owned by the local government, to facilitate the lease conveyance or encumbrance of land owned by the local government, to provide financial assistance to the development that received streamlined approval that is used for housing for very low-, low-, or moderate-income households; and,
 - c) Clarify that a development project that meets specified objective planning standards is not subject to a conditional use permit, any other discretionary approval from the planning commission or any other equivalent board or commission responsible for the review of development projects, and are subject to the ministerial approval process provided for in the bill.
- The Committee may also wish to consider adding in language that would clarify that ministerial approval, as referenced in SB 35, exempts developments from more than just a conditional use permit, but also other discretionary reviews by local governments.
- 6) **Arguments in Support.** BRIDGE Housing argues that clarifications will help more projects meet their potential and entice future projects to utilize these effective tools in getting housing built.
 - 7) **Arguments in Opposition.** Opponents argue that this bill contains more than clean-up, and should be vetted through a stakeholder process next year.

- 8) **Double-Referral.** This bill is scheduled to be heard on June 27, 2018, in the morning by the Housing and Community Development Committee. Should the bill pass, it will be heard in this Committee in the afternoon.

REGISTERED SUPPORT / OPPOSITION:

Support

BRIDGE Housing

Opposition

Alliance for Community Transit-Los Angeles (unless amended)

American Planning Association, California Chapter

California Rural Legal Assistance Foundation (unless amended)

Housing California (unless amended)

Public Advocates

Public Counsel (unless amended)

Public Interest Law Project (unless amended)

PolicyLink

Tenants Together

Western Center on Law & Poverty (unless amended)

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