

CONCURRENCE IN SENATE AMENDMENTS

AB 831 (Grayson)

As Amended August 27, 2020

2/3 vote. Urgency

SUMMARY:

Makes changes to the process for development projects approved by the streamlined, ministerial process created by SB 35 (Wiener), Chapter 366, Statutes of 2017. The change provide a path to modify approved development projects prior to the issuance of the final building permit required for construction, including provisions on how local governments must treat such an application for a modification. This bill also specifies how local governments must approve and construct public improvements provided in conjunction with the streamlined, ministerial development project in a manner that would not inhibit, chill, or preclude the development.

The Senate Amendments:

Delete and replace the version passed by the Assembly. Specifically, the amendments:

- 1) Remove previous content of this bill, which would have
 - a) Required the Department of Housing and Community Development (HCD) to post their recent study on local impact fees on housing development to its internet website on or before March 1, 2020; and
 - b) Required HCD to issue a report to the Legislation by January 1, 2024 on the progress of cities and counties in adopting the recommendations made in the study.
- 2) Clarify that a development subject to the streamlined, ministerial approval process created by SB 35, and the site on which it is located, must be zoned for residential use or mixed-use development and at least two-thirds of the square footage of the development must be designated for residential use.
- 3) Provide a process for modification to a development that has been approved under the streamlined, ministerial approval created by SB 35, as follows:
 - a) Allow a development proponent to request a modification if that request is submitted prior to the issuance of the final building permit required for construction.
 - b) Require a local government to approve the modification if it determines that the modification is consistent with the objective planning standards outlined in SB 35, as follows:
 - i) If the modified project does not substantially differ, as specified, from the approved development, the local government must use the same assumptions and methodology that was originally used to assess consistency for the development; or
 - ii) If the modified project does substantially differ, as specified, from the approved development, the local government may apply objective planning standards adopted after the development application was first submitted.

- iii) For either i. or ii., objective standards contained in the California Building Standards Code, including, but not limited to building plumbing, electrical, fire, and grading codes may be applied to all modifications.
 - iv) The local government's review of a modification request must be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development's consistency with the objective planning standards and must not consider prior determinations that are not affected by the modification.
 - v) A guideline adopted or amended by HCD after a development was approved cannot be used as a basis to deny proposed modifications.
- c) Provide that, upon receipt of an application requesting a modification, the local government must determine if the modification is consistent with the objective planning standards and approve or deny the modification request within 60 days after submission of the request, or with 90 days if design review is required.
- 4) Modify processes regarding public improvements necessary to implement developments approved by the streamlined, ministerial approval process created by SB 35, as follows:
- a) If the public improvement is located on land owned by the local government, then to the extent that the public improvement requires approval from the local government, the local government must not exercise its discretion over any approval relating to the public improvement in a manner that would inhibit, chill, or preclude the development;
 - b) If the local government receives an application for a public improvement, it must:
 - i) Consider an application for a public improvement based upon any objective planning standards in any other state or local laws that were in effect when the original development application was submitted; and
 - ii) Conduct its review and approval in the same manner as it would evaluate the public improvement if required by a project that is not eligible to receive ministerial or streamlined approval.
 - c) If the local government receives an application for a public improvement, it must not:
 - i) Adopt or impose any requirement that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval; or
 - ii) Unreasonably delay in its consideration, review, or approval of the application.
- 5) Provide that the Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances relating to the need for multifamily housing developments in the areas served by the San Francisco Bay Area Rapid Transit District.
- 6) Provide that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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, within the meaning of Section 17556 of the Government Code.

7) Include an urgency clause.

COMMENTS:

SB 35 (Wiener) of 2017. In 2017, SB 35 created a streamlined approval process for infill projects with two or more residential units in localities that have failed to produce sufficient housing to meet their regional housing needs allocation. 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 including that the development meets specified labor standards, is not on an environmentally sensitive site, and would not result in the demolition of housing that has been rented out in the last ten years. Localities must provide written documentation to the developer if there is a failure to meet the specifications for streamlined approval, within a specified a period of time. If the locality does not meet those deadlines, the development must be deemed to satisfy the requirements for streamlined approval and must be approved by right.

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 issued building permits 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 halfway 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 permitting enough units to meet its above moderate and its lower income RHNA, a development must dedicate 10% of the units to lower income in the development to receive streamlined, ministerial approval. If the jurisdiction is permitting its above moderate income and not the lower income RHNA, then developments must dedicate 50% of the units for lower income to have access to streamlining.

Clarifying the two-thirds requirement. SB 35 provides that two-thirds of a project must be residential (i.e., authorizes certain mixed-use projects) to qualify for streamlined approval. Recently in an SB 35 lawsuit, a superior court judge interpreted SB 35 streamlining to apply only to mixed-use projects in the narrow circumstance where the site's zoning calls for at least two-thirds residential. According to the sponsors, there is likely not a zoning district in the state that would meet this requirement. This bill clarifies the author's intent that the two-thirds residential requirement apply to the proposed project itself, not the zoning.

Modifying existing SB 35 applications. According to the sponsors, as housing projects evolve, developers sometimes need to make modifications to projects. This is because residential projects by their nature are complex and include design considerations that cannot be finalized until the completion of the design for the project for the building permit and final applications. Additionally, the time between the initial application and the first building permit can take one to two years, sometimes longer, during which time market conditions, which drive project decisions can change.

Some jurisdictions may use this opportunity to change the planning standards that are applied to a project as a means to invalidate a project. This bill provides that an SB 35 project may make modifications to the project prior to the issuance of the final building permit required for construction so long as the project continues to meet specified objective standards that were in place when the original application was submitted to the local jurisdiction. The local government may apply objective standards adopted after the initial application was submitted only when the modification to the project results in the total number of residential units or square footage changes by 15% or more, when the total number of residential units or square footage changes by 5% or more and is necessary to subject the development to a development standard in order to avoid a specific adverse impact to health and safety and there is no other alternative to mitigate the impact, or for meeting objective standards in Building Standards Code. These exceptions are intended to impose guardrails so that a developer does not make substantial changes resulting in essentially new project and claim the rights to use existing standards.

Approval of off-site improvements. According to the sponsors, the SB 35 process is not clear as to how off-site public improvements necessary for a housing project are to be approved. Housing projects must connect with existing infrastructure, such as roads, sidewalks, and public utilities, which is often in the public right of way. In order to connect in the public right of way, a developer must seek approvals to do so and some jurisdictions have used the improvements approval process as a means to stall SB 35 projects. Given that these approvals are necessary for a housing development project, this bill attempts to clarify that local governments must approve these improvements without delay and in a manner that does not inhibit, chill, or preclude the project.

According to the Author:

"California is in the midst of an historic housing crisis. We need to make sure our state laws work to enable housing to be built where it is most needed. The state has already done a lot of work to create new housing, but we still need to do more. AB 831 makes technical clarifications to SB 35 (Wiener, 2017), the law related to housing projects that may be approved under a streamlined and ministerial process. Housing projects often require modifications to the initial project design and additional permits to connect the project to existing public infrastructure. This bill clarifies an allowable level of changes to be made to the initial design of a project before a new application is required and makes clear that off-site improvement permit requests cannot be used to block a project, though the permits could still be denied for cause. Finally, AB 831 clarifies that the 2/3 residential requirement in SB 35 applies only to a project, and not the project's site or its zoning. AB 831 will ensure that an important state law works as it was intended."

Arguments in Support:

Supporters argue that this bill will help better implement the pro-housing policies contained in SB 35. According to the California Association of Realtors, "Ultimately, AB 831 (Grayson) will help advance the goals of SB 35, the reduction of development costs and the improvement of the pace of housing production."

Arguments in Opposition:

The City of Rancho Palos Verdes opposes this bill because of its affiliation with SB 35, stating "Rancho Palos Verdes opposes legislation that pre-empts local discretionary land use authority and compromises critical project level environmental review and public input."

FISCAL COMMENTS:

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

VOTES:**ASM HOUSING AND COMMUNITY DEVELOPMENT: 8-0-0**

YES: Chiu, Diep, Gabriel, Gloria, Kiley, Limón, Maienschein, Quirk-Silva

ASM APPROPRIATIONS: 13-0-5

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Maienschein, Petrie-Norris, Quirk, Robert Rivas

ABS, ABST OR NV: Bigelow, Brough, Diep, Fong, Obernolte

ASSEMBLY FLOOR: 73-0-7

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooper, Cunningham, Dahle, Daly, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Kiley, Lackey, Levine, Limón, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Muratsuchi, Nazarian, O'Donnell, Obernolte, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Voepel, Waldron, Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Cooley, Diep, Eggman, Eduardo Garcia, Gray, Low, Ting

SENATE FLOOR: 29-0-11

YES: Allen, Archuleta, Atkins, Beall, Borgeas, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Leyva, McGuire, Mitchell, Monning, Moorlach, Nielsen, Pan, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

ABS, ABST OR NV: Bates, Dahle, Glazer, Grove, Jackson, Jones, Melendez, Morrell, Portantino, Stern, Wilk

UPDATED:

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