SENATE RULES COMMITTEE
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 1085
Author: Skinner (D) and Caballero (D), et al.
Amended: 6/18/20
Vote: 21

SENATE HOUSING COMMITTEE: 9-0, 5/26/20
AYES: Wiener, Caballero, Durazo, McGuire, Moorlach, Roth, Skinner, Umberg, Wieckowski
NO VOTE RECORDED: Morrell, Bates

SENATE APPROPRIATIONS COMMITTEE: 5-1, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Jones
NO VOTE RECORDED: Bates

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

SOURCE: Author

DIGEST: This bill makes several changes to density bonus law (DBL) and provides additional benefits to housing development projects that include moderate-income rental housing units, as specified.

ANALYSIS:

Existing law:

1) Requires a local planning agency, annually by April 1, to submit a report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community development that includes data points and updates on housing plans and approvals.

2) Requires all cities and counties to adopt an ordinance that specifies how they will implement state DBL. Requires cities and counties to 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 one of the following:

   a) 10% of the total units of a housing development for lower income households;
   b) 5% of the total units of a housing development for very low-income households;
   c) A senior citizen housing development or mobile home park;
   d) 10% of the units in a common interest development for moderate-income households;
   e) 10% of the total units for transitional foster youth, disabled veterans, or homeless persons;
   f) 20% of the total units for lower-income students in a student housing development.

3) Requires the city or county to allow an increase in density on a sliding scale from 20% to 35%, depending on the percentage of units affordable to low- and very low-income households, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. Requires the increase in density on a sliding scale for moderate-income for-sale developments from 5% to 35% over the otherwise allowable residential density.

4) Provides that upon the request of a developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of disabled and guest parking, that meets the following ratios:

   a) Zero to one bedroom — one onsite parking space.
   b) Two to three bedrooms — two onsite parking spaces.
   c) Four and more bedrooms — two and one-half parking spaces.

5) Provides that if a project contains 100% affordable units and is within ½ mile of a major transit stop, the local government shall not impose a parking ratio higher than 0.5 spaces per unit. Provides that if a project contains 100% affordable units and houses persons with special needs or persons who are 62 years or older, the ratio shall not exceed 0.3 spaces or .5 spaces per unit, respectively. The development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

6) Provides that the applicant shall receive the following number of incentives or concessions:

   a) One incentive or concession for projects that include at least 10% of the total units for moderate-income households, 10% of the total units for lower-income households, or at least 5% for very low-income households.
   b) Two incentives or concessions for projects that include at least 20% of the total units for moderate-income households, 20% of the total units for lower income households, or least 10% for very low income households.
   c) Three incentives or concessions for projects that include at least 30% of the total units for moderate-income households 30% of the total units for lower-income households, or at least 15% for very low-income households.

7) Limits the applicability of density bonus law for moderate-income developments to for-sale units in a common interest development.

8) Defines "housing development" as development project for five or more residential units.

This bill:

1) Adds to the annual report a requirement for the local agency to include the number of units in a student housing development for lower-income students for which the developer was granted a density bonus.

2) Makes a student housing development containing at least 20% of the units for lower-income students, as defined, eligible for one incentive or concession.

3) Provides that a development containing 20% moderate-income rental units to receive the following:

   a) 35% density bonus.
   b) For projects located ½ mile from a transit stop, a local government shall not impose a parking ratio inclusive of handicapped and guest parking that exceeds .5 spaces per bedroom.

4) Provides that the inclusion of the specified percentage of moderate income rental units shall entitle a developer to the following amounts of concessions and incentives:

   a) One incentive or concession for projects that include at least 20% of the total rental units for moderate-income households.

   b) Two concessions or incentives for projects that include at least 30% of the total rental units for moderate-income households.
   c) Three concessions or incentives for projects that include at least 40% of the total rental units for moderate-income households.

5) Provides that in order for a development with moderate-income rental units to be eligible for the benefits in (4) above, the rent for the moderate-income unit must be 30% below the market rate for the locality and the applicant must provide the locality with evidence to establish that the units meet those requirements.

6) Prohibits fees relating to affordable housing, including inclusionary zoning fees, in lieu fees, and public benefit fees established under a local agency's police powers from being imposed on a housing developments affordable units or bonus units.

7) Defines "total units" or "total dwelling units" as the calculation of the number of units that:

   a) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.
   b) Includes a unit designated to satisfy an inclusionary zoning requirement of a local agency.

8) Makes findings and declarations that it is intent of the Legislature to make modifications to the Density Bonus Law 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 Density Bonus Law 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. State that the Legislature further intends that these modifications will ensure that the Density Bonus Law creates incentives for the construction of more housing across all areas of the state.

Comments

1) *DBL*. Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. DBL allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable

units. Allowing more total units permits the developer to spread the cost of the affordable units more broadly over the market-rate units. The idea of DBL is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy.

Under existing law, if a developer proposes to construct a housing development with a specified percentage of affordable units, the city or county must provide all of the following benefits: a density bonus; incentives or concessions (hereafter referred to as incentives); waiver of any development standards that prevent the developer from utilizing the density bonus or incentives; and reduced parking standards.

To qualify for benefits under DBL, a proposed housing development must contain a minimum percentage of affordable housing. If one of these five options is met, a developer is entitled to a base increase in density for the project as a whole (referred to as a density bonus) and one regulatory incentive. Under DBL, a market rate developer gets density increases on a sliding scale based on the percentage of affordable housing included in the project. At the low end, a developer receives 20% additional density for 5% very low-income units and 20% density for 10% low-income units. The maximum additional density permitted is 35% (in exchange for 11% very low-income units and 20% low-income units). The developer also negotiates additional incentives and concessions, reduced parking, and design standard waivers with the local government. This helps developers reduce costs while enabling a local government to determine what changes make the most sense for that site and community.

2) *Need for Moderate Income Housing*. In October 2019, the California Housing Partnership Corporation (CHPC) published a report that compared the median asking rent data on Craigslist for two-bedroom apartments with regionally adjusted 2019 area median incomes. The report found that very low-income households earning 50% AMI can afford modest rents in only one county in California; households earning 60% AMI could afford modest rents in 11 counties; 80% AMI could afford modest rents in 29 counties; and households earning 100% AMI (*e.g.* at median income level) could afford modest rents in all but 6 counties, primarily in the State's high-cost coastal regions. Generally, when low-income households experience severe cost burden and spend most of their income on housing, families have to cut back on essentials such as food, healthcare, childcare, and transportation. These families are often those that are closest to becoming homeless. While CHPC recommends prioritizing assistance to households with the lowest income, they note that there are

moderate income households in specific neighborhoods and counties that need help. CHPC recommends assistance for households earning more than 80% AMI to generally be limited to areas of the State where median income households cannot afford modest rents, particularly in the six higher cost coastal counties. This bill seeks to incentivize the development of more moderate-income households, without any additional public funding.

NOTE: To see a chart demonstrating how this bill changes density bonus law, please see the policy committee analysis.

3) *Unintended Consequences*. While the author's intent is to incentivize the construction of more developments containing moderate-income units, this bill may have the unintended consequence of discouraging the development low-income developments. This is due to the fact that it would enable certain developments with 20% low income units to receive the same benefits (density and possible reduced parking) as certain developments with 20% moderate-income units. Given the choice, a developer will likely choose to develop the moderate-income units because those developments will yield more returns for the developer (*i.e.*, the developer receives more in rent from a moderate-income household than from a low-income household). The author has addressed some of these concerns by providing fewer concessions and incentives to moderate-income rental developments than developments containing the same percentage of low-income units as well as requiring the rent for the moderate-income units to be 30% below the market rate for the locality. According to supporters of the bill, under current law, in many parts of the state, the benefits provided in density bonus law are not financially attractive enough for developers to use the law to create low-income or moderate-income housing units; they are, however, utilized to create very low-income units. This bill would make changes to density bonus law so that the benefits to develop moderate income units would be financially attractive and therefore utilized by developers. The benefits to low-income developments, however would be left untouched, thus failing to meet the demand for housing at that income level. The author has agreed to work moving forward to ensure all income levels are attractive to developers, including low-income units.

4) *Additional changes to DBL*. In addition to the changes for projects with moderate income units, this bill makes several changes to DBL:

   a) Prohibits local governments from imposing housing fees for affordable housing upon low- and moderate-income units or any bonus units in a density bonus housing development.

b) States that the total units shall be designated to satisfy an inclusionary zoning requirement. In other words, any affordable units constructed to receive a density bonus shall count towards a local government's inclusionary ordinance, rather than be additive to the inclusionary ordinance requirement.
c) Authorizes low-income student housing projects to receive an incentive or concession.
d) Increases the density for a development that contains 11% VLI units to receive a 40% density bonus, instead of a 35% density bonus. This increase is to ensure that the creation of very low-income developments is more attractive to a developer than a development containing moderate-income units.

5) *Senate's 2020 Housing Production Package.* This bill has been included in the Senate's 2020 Housing Production Package.

6) *Double-referral.* This bill was also referred to the Senate Governance and Finance Committee and this analysis includes information from the committee.

7) *Appropriations Amendments.* This bill was amended to make clarifying changes.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- The Department of Housing and Community Development (HCD) estimates it would incur costs of $101,000 in 2020-21 and $95,000 in 2021-22 for 0.5 PY of staff time to update guidance documents for the Density Bonus Law, and to provide technical assistance and outreach education to local agencies and affordable housing developers. (General Fund)

- Unknown local costs to provide for the additional incentives when applying a density bonus, 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).

SUPPORT: (Verified 6/18/20)

All Home
Bay Area Council
Bridge Housing Corporation

California Association of Realtors
California Building Industry Association
California Community Builders
California YIMBY
Central City Association
Chan Zuckerberg Initiative
Facebook, INC.
Habitat for Humanity California
Los Angeles Business Council
San Francisco Bay Area Planning and Urban Research Association
San Francisco Foundation
San Francisco Housing Action Coalition
Schneider Electric
Silicon Valley At Home
Silicon Valley Community Foundation
Terner Center for Housing Innovation At the University of California, Berkeley
TMG Partners
1 Individual

OPPOSITION: (Verified 6/18/20)

A Better Way Forward to House California
California Rural Legal Assistance Foundation
New Livable California Dba Livable California
Sustainable Tamalmonte
Western Center on Law and Poverty
11 Individuals

ARGUMENTS IN SUPPORT: According to the author, "[t]he State Density Bonus Law is a unique tool that incentivizes developers to build more affordable housing in California. However, flaws in the program result in many cities underutilizing the density bonus tool or not using it at all. SB 1085 improves and clarifies the density bonus statute to expand its use in California to increase affordable housing production."

ARGUMENTS IN OPPOSITION: The California Rural Legal Assistance Foundation (CRLAF) and Western Center on Law and Poverty (WCLP) are opposed to this bill because it would incentivize the construction of moderate-income units at the expense of low- and very low-income households. This will further exacerbate the affordability crisis for lower-income households even further. CRLAF and WCLP are also opposed to increasing benefits to student housing developments without adding any increased affordability. These projects were not given access to the law's other benefits given that rents are typically charged on a per bed basis rather than per unit and therefore lead to higher rental income. They are concerned that not enough time has passed to determine that these student housing projects need access to additional benefits to be viable.

A Better Way Forward to House California is opposed to imposing additional density, which they view as mandating a one-size-fits-all solution that ignores the complexity and work involved in nexus studies and other undertakings to determine the impacts of a project. They are also opposed to eliminating needed local fees that pay for critical infrastructure. They note that current density bonus law is sufficient to retain local oversight over developments projects while spurring needed production.

Prepared by: Alison Hughes / HOUSING / (916) 651-4124
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