Date of Hearing: July 28, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
SB 1299 (Portantino) – As Amended June 18, 2020

SENATE VOTE: 39-0

SUBJECT: Housing development: incentives: rezoning of idle retail sites

SUMMARY: Upon appropriation of funds from the state General Fund, provides grants to local governments for production of moderate-income housing on idle commercial shopping centers. Specifically, **this bill**:

1) Includes the following definitions:

   a) Defines "big box retailer" as a store of greater than 75,000 square feet of gross buildable area that generates or previously generated sales or use taxes;

   b) Defines "commercial shopping center" as a group of two or more stores that maintain a common parking lot for patrons of those stores;

   c) Defines "idle" as at least 80 percent of the leased or rentable square footage of the big box retailer or commercial shopping center site is not occupied for at least a 12-month period; and

   d) Defines "sales and use tax revenue" as the cumulative amount of revenue generated by taxes imposed by a local government, as specified.

2) Upon appropriation, requires the Department of Housing and Community Development (HCD) to administer a program to provide grants to local governments upon completion of moderate-income housing on sites that contained idle big box retailers or commercial shopping centers, as follows:

   a) To be eligible for funding, the local government must have:

      i) Rezoned one or more idle sites used for a big box retailer or commercial shopping center to allow moderate-income housing (between 80-120 percent of Area Median Income (AMI)) as a use by right, in that cannot be denied by the local government by right and is not subject to the California Environmental Quality Act (CEQA);

      ii) Approve and issue a certificate of occupancy for a moderate-income housing development on each site rezoned for which the local government seeks a grant; and

      iii) Apply to HCD for an allocation of grant funds and provide documentation that it has complied with the requirements in this bill.

   b) For each calendar year in which funds are made available, HCD must issue a notice of funding availability (NOFA) for the distribution of funds for the following 12-month period.

c) Requires HCD to allocate the determined grant amount to each local government for each of the seven years following the date of the local government's application.

d) Provides that the amount granted to each eligible local government must be as follows:

i) The annual grant amount must equal to the average amount of annual sales and use tax revenue generated by each idle site identified in the local government's application over the seven years immediately preceding the date of the local government's application. This amount must be reduced in proportion to the percentage of the square footage of the development that is used for a use other than moderate-income housing; and

ii) If, for any NOFA, the amount of funds made available for purposes of this program is insufficient to provide each eligible local government with the full amount specified above, based on the number of applications received, HCD must reduce the amount of grant funds awarded to each eligible local government proportionally.

3) Enables HCD to review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this chapter, as specified.

EXISTING LAW:

1) Establishes the Permit Streamlining Act within Planning and Zoning Law, which sets forth various time limits within which and grounds by which state and local government agencies must either approve or disapprove permits (Government Code Section 65920 through 65964.1).

2) Defines "use by right" as prohibiting a local government from requiring a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of the CEQA. A local government may require a housing development to undergo design review, however it shall not constitute a project for CEQA (Government Code Section 65583.2).

3) Provides by right housing approvals for projects that meet certain environmental, affordable housing, and labor standards, based on project size and jurisdiction (Government Code Section 65913.4).

4) Defines "moderate-income" as persons and families whose income is between 80 and 120 percent of AMI (Health and Safety Code Section 50093).

5) Establishes Housing Element law (Government Code Section 65580 through 65589.11), which:

a) Provides that each community's fair share of housing to be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and the Department of Housing and Community Development (HCD) develop regional housing needs estimates; (b) councils of government (COGs) allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and (c) cities and counties incorporate their allocations into their housing elements.

b) Requires that cities and counties produce, and HCD certify, a housing element to help fulfill the state's housing goals. In metropolitan areas, these housing elements are required every eight years.

FISCAL EFFECT: Unknown

COMMENTS:

Author's Statement: According to the author, "HCD estimates that the state needs upwards of 200,000 housing units per year in order to maintain a healthy housing sector. Currently, the industry is producing less than half of that amount. This scarcity has driven our housing costs to be the highest in the nation prohibiting occupations like teachers, nurses, public safety officers and younger professionals the ability to afford owning a home, essential for building a stronger and vibrant economy. We see an opportunity through the growth of e-commerce and the idling of commercial retail sites. There's an opportunity to convert idle retail sites to workforce housing. We want to create a pilot program that encourages local governments to partner with the industry to build housing on these sites and reward the local government with a sales tax rebate when these projects are rezoned, completed and have been issued a certificate of occupancy. These rebates will give local governments the resources to replace the sales tax revenues that came from these former retail sites to pay for the necessary public safety and essential infrastructure needed for these new residential properties to operate in their local jurisdiction."

Background:

California's Housing Crisis: The cost of housing in California is twice the national average, and higher than any state excluding Hawai'i. Only 28 percent of households can buy the median priced home. Over half of renters and 80 percent of low-income renters are rent-burdened, meaning they pay over 30 percent of their income towards rent. The state has over 150,000 persons experiencing homeless, the highest in the nation.

According to the Legislative Analyst Office, "a collection of factors drive California's high cost of housing. First and foremost, far less housing has been built in California's coastal areas than people demand. As a result, households bid up the cost of housing in coastal regions. In addition, some of the unmet demand to live in coastal areas spills over into inland California, driving up prices there too." A 2016 McKinsey study determined that California's housing deficit is over two million units. According to HCD, there needs to be 180,000 units built per year to maintain housing costs. By contrast, housing production averaged less than 80,000 new homes annually over the last 10 years.

Housing needs and approvals process. Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs, which is completed through the regional housing needs allocation process. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years. The next round of housing elements, known as the "sixth cycle," are due in the state's major metropolitan areas in 2021 or 2022.

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. To be built, new housing must comply with zoning as well as other standards and criteria established by local governments, and receive one or more permits from local planning departments and approval from local planning commissions, city councils, or county board of supervisors. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials.

In recent years, the Legislature has passed numerous bills intended to improve and streamline the approval process for housing. These include bills that cover similar ground as SB 1299 proposes to, such as SB 35 (Wiener, Mitchell), that established a process for housing projects to be approved by right if they meet objective environmental criteria, affordable housing requirements, and labor standards for construction workers. It also includes AB 73 (Chiu) and SB 540 (Roth), which created a grant programs for cities that facilitate streamlined and ministerial housing that meet locational criteria, affordable housing requirements, and labor standards for construction workers.

Fiscalization of Land Use. "Fiscalization of land use" is the concept that some types of development provide more tax revenue than others, thereby influencing the decision of local decision makers. In California, the bias is towards commercial development, and away from residential development. Ever since the passage of Proposition 13 in 1978, property taxes have constituted a diminishing source of revenue for governments. This situation was exacerbated in the early 1990s when the state effectively commandeered local property tax revenues to meets its obligation to the public schools through the Education Revenue Augmentation Fund. In many cases, the additional revenues a local government now earns from each new housing unit are insufficient to cover the added expense of providing services to the new residents of that home. Some of the fixed costs of infrastructure can be recouped through fees, but the on-going service costs remain at issue. Thus, a city council deciding the fate of a new housing development faces the unenviable dilemma of denying needed housing or reducing services to existing constituents.

At the same time, when a city council considers an alternate proposal to develop a parcel of land as a retail center, the fiscal incentives strongly support approval. Local governments receive a large portion of all sales tax revenue generated within their borders. The additional revenue received from a large retail facility—such as a big-box retailer, online distribution center, or a car dealer—easily outweighs the costs of providing services to the facility. Local government can use these surplus revenues to enhance services to its constituents. Not only can it be difficult to get approval for a new housing development on residentially-zoned land, but more land is zoned commercial in the hope that retail establishments can be attracted. The only real fiscal incentive local governments have to approve housing is to ensure there are enough residents to support the retailers.

Purpose of this Bill:

This bill seeks to facilitate the development of more housing affordable to households making a moderate income. It does so by incentivizing local governments to facilitate the conversion of idle big box sites and commercial shopping centers into such housing, in the form of grants issued by HCD. These grants would be issued to cities that enable such housing by right on those sites, and on which such units are produced. The grants would be equivalent to the sales tax generated by the site over the seven years prior to the local government's grant application. By tying the grant directly to lost sales tax revenue, the bill attempts to directly address the issue of fiscalization of land use discussed above. The grant program is subject to appropriation of General Fund dollars, and would be scaled proportionately if appropriation is insufficient to cover all qualified grantees. No funding for this bill was included in this year's budget.

Arguments in Support: Supporters argue that this bill will simultaneously help build moderate-income housing and reward cities that facilitate such housing. According to the Los Angeles County Business Federation, this bill will "will give local governments the needed resources to compensate the sales tax revenues produced from these former retail sites that help provide the necessary public safety and essential infrastructure needed to provide services to their residents.

Arguments in Opposition: Opponents argue that this bill would should include labor standards in return for the incentives provided by the bill. According to the State Building and Construction Trades Council of California, "We should not have to sacrifice the middle-class wages and benefits of construction workers to provide incentives to developers to build affordable housing."

Staff Comments:

The underlying principles of this bill are laudable – to facilitate the development of much needed housing for the middle class while addressing the issue of fiscalization of land use. However, there are a number of issues with this bill that will make its underlying vision difficult to realize.

The foremost setback to this bill is that funding was not appropriated for this program in this year's state budget. If there had been appropriation this year, the funding could have served as a real incentive for local governments contemplated how to plan and rezone to fulfill their regional housing needs allocation. However, it will be at least a year at a minimum before this program is funded. In that period, most or all of the jurisdictions in the state will have completed their housing elements and specified and/or completed their rezoning, thereby deflating the incentive element of this program.

Additionally, this bill does not incent the kind of housing that is most needed in the state of California, which is for low-income households. 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 percent AMI can afford modest rents in only one county in California; household earning 80 percent AMI could afford modest rents in 29 counties; and households with median incomes earning 100 percent AMI could afford modest rents in all but six counties, primarily in the State's high-cost coastal regions. Over 80 percent of low-income renters are rent burdened, in that they sacrifice other essential needs to pay for housing. These are the households that are most in need and at risk of homelessness, and therefore the logical beneficiaries of limited state dollars.

Furthermore, while the bill defines housing for moderate-income persons and families as "workforce housing," due to the hourglass nature of the modern economy, Census data reveals that only about 10 percent the state's workforce makes between 80 and 120 percent of AMI. In many parts of the state, teachers, licensed vocational nurses, and paralegals, for example, earn less than 80 percent AMI. This is particularly true in high cost and coastal areas of the state.

Another complicating factor is that, in most of the state, the price of market rate housing substantially exceeds 120 percent of AMI. While the incentive of by right housing will meaningfully reduce costs, it is likely insufficient to bridge the gap between the market rate and sales prices or rents affordable to moderate-income households. Therefore, additional public subsidies would be required to facilitate the construction of moderate-income housing. There are limited programs in the state that provide such subsidies. One is the California Housing Finance Agency's recent Mixed-Income Program, which builds housing at 30 percent to 120 percent AMI. However, the vast proportion of those units are for households making under 80 percent AMI.

In recognition that the bill as written does not incentivize the type of housing that is the greatest need in the state, the Committee may wish to recommend amending the bill to require that to qualify for a grant, that the range of qualifying units is expanded to include all households making less than 120 percent AMI, as long as the unit is initially made available at at least 20 percent below the market rate. Additionally, to ensure that any units provided in such projects truly serve the intended demographic for the long term, the Committee may wish to recommend amending the bill to require deed restrictions for all units of 45-years for-for sale units and 55-years for rental units.

Committee Amendments: As outlined above, the committee may wish to consider amending the bill as follows:

- Expand the range of qualifying units to include all households making less than 120 percent area median income, as long as the unit is initially made available at at least 20 percent below the market rate; and
- Require deed restrictions for all units of 45-years for for-sale units and 55-years for rental units.

Related Legislation:

SB 35 (Wiener, Mitchell), Chapter 366, Statutes of 2017. Requires in jurisdictions that have not met their Regional Housing Needs Assessment to allow for a ministerial, streamlined process for housing approvals.

AB 73 (Chiu), Chapter 371, Statutes of 2017. Provides state financial incentives to cities and counties that create a zoning overlay district with streamlined zoning. Development projects must use prevailing wage and include a minimum amount of affordable housing.

SB 540 (Roth), Chapter 369, Statutes of 2017. Authorizes the state to provide planning funds to a city or county to adopt a specific housing development plan that minimizes project level environmental review and requires affordable housing and labor standards.

SB 1385 (Caballero) (2020). This bill would enable housing development on land that zoned for retail or office uses, and provides a ministerial and streamlined process on this land where there is at least 50 percent vacancy. This bill is pending hearing in the Assembly Committee on Local Government.

AB 3107 (Bloom) (2020). This bill would allow the housing to be built in areas designated by a general plan element to allow commercial development, as long as the housing has at least 20 percent of its units reserved for low income households. This bill is pending hearing in the Senate Committee on Housing.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Business Federation (BIZ-FED) (Sponsor)
A Better Way Forward to House California
California Apartment Association
California Association of Realtors
City of Cupertino
City of Laguna Niguel
City of Lake Forest
Comstock Hills Homeowners Association
Franklin Corridor Coalition
Grayburn Avenue Block Club
Hollywood Chamber of Commerce
Livable California
Livable Riverside and Moreno Valley
Los Angeles County Division of the League of California Cities
Orange County Business Council
Shadow Hills Property Owners Association
Western Quadrant of North Leimert Park

Opposition

City of Redondo Beach
State Building & Construction Trades Council of California

Oppose Unless Amended

California Labor Federation, AFL-CIO
California State Council of Laborers
District Council16, International Union of Painters and Allied Trades, AFL-CIO
International Brotherhood of Boilermakers, Western States Section

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