

Date of Hearing: August 18, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 1299 (Portantino) – As Amended August 3, 2020

Policy Committee: Housing and Community Development Vote: 7 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill establishes a program, to be administered by the Department of Housing and Community Development (HCD), to provide grants to local governments for production of workforce housing on idle commercial shopping center properties. Specifically, this bill:

- 1) Requires HCD, upon appropriation of funding by the Legislature, to establish a program to provide grants to cities and counties that rezone idle or underutilized big box retailer or commercial shopping center properties to instead allow for the development of workforce housing for lower- and moderate-income households.
- 2) Defines “workforce housing” as an owner-occupied or rental housing development where 100% of the total units are for lower-income households (20% may be for moderate income households), all units are offered at an affordable cost or rent, as defined, and all rental units are income-restricted for at least 55 years and all owner-occupied units for at least 45 years.
- 3) Requires a city or county, to be eligible for funding, to have rezoned one or more idle sites, as defined, to instead allow the development of workforce housing as a use by right.
- 4) Further requires a city or county, to be eligible for funding, to approve and issue a certificate of occupancy for a workforce housing development on each site rezoned, apply to HCD for grant funds and provide documentation that the city or county has complied with all requirements in this bill.
- 5) Requires the grant amount awarded to each eligible city or county be equal to the average amount of annual sales and use tax revenue generated by each idle site identified in the city or county’s application over the seven years immediately preceding the date of the application, subject to certain modifications.
- 6) Requires HCD to allocate the grant amount determined in “5” above to the city or county for each of the seven years following the date of the city or county’s application.

FISCAL EFFECT:

- 1) HCD estimates, subject to an appropriation by the Legislature, administrative costs of up to \$1.2 million (GF) annually for 6 PY of staff time, assuming 75 grants are awarded annually, to provide technical assistance to developers and local governments, develop Notices of Funding Availability (NOFAs), review applications, and process funding agreements. Actual

costs for ongoing administration of the program would depend upon the amount of funding available and the number of applications submitted by local governments for review by HCD. There would be additional one-time costs to develop and adopt guidelines.

- 2) Unknown annual cost pressures, likely in the tens of millions of dollars (GF), in future fiscal years to provide funding for the grant program. Since the bill requires grants to be awarded for seven consecutive years, the cost pressures could grow annually in order to fund the second through seventh years of grants and to award new grants in future years, depending on how the program is structured. Absent an upfront allocation of funds to HCD sufficient to fund the grants for at least seven years, it appears unlikely a city or county would use this program.

It is difficult to estimate the amount of funding necessary to establish an effective program, as the characteristics of each site, such as the size of the commercial space and historical sales tax generation, are likely to vary significantly and would not be known until after applications are filed. For example, if a 100,000 square foot idle big box retailer site historically generated \$300 per square foot in average annual sales, and 80% of sales were subject to the local share of sales and use tax, that site would be eligible for an annual grant of \$619,200 for seven years. Grants for smaller commercial strip malls would likely be much smaller.

Further, program eligibility requires a city or county to engage in a process of identifying eligible idle retail sites, rezoning those sites, attracting a developer to design and construct a workforce housing project, and issuing a certificate of occupancy. All these requirements must occur prior to the local government applying for a grant and would likely take several years. Assuming a local government would not pursue this program until it is funded by the Legislature, there would likely be a multi-year delay between program funding availability and the receipt of the first grant application by HCD.

COMMENTS:

- 1) **Purpose.** This bill seeks to provide an incentive for cities and counties to build affordable housing on idle retail sites by providing a sales tax rebate for seven years, equivalent to the average amount generated on the site in the prior seven years, after the land is rezoned and the housing project completed.
- 2) **Background.** Existing law requires cities and counties to prepare a general plan comprised of seven mandatory elements, including a housing element that identifies existing and projected housing needs. The housing element must include an inventory of adequate sites zoned for housing at all income levels and to accommodate a jurisdiction's share of the regional housing needs that is sufficient to account for population growth and to overcome existing housing deficiencies over the planning period.

If the city or county does not have enough sites within its existing inventory of residentially zoned land to accommodate its share of the regional housing needs, it must adopt a program to rezone land within the first three years of the planning period. Housing elements must be updated every eight years in urban areas, and every five years in more rural areas.

- 3) **Use by Right.** Existing law 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 California Environmental Quality Act (CEQA). A local government may require a by-right housing development to undergo design review, but cannot require CEQA review. To be eligible for a grant under this bill, a local government must allow the workforce housing development to be a use by right on the rezoned land.

- 4) **Fiscal incentives.** In California, the sales and use tax generated by a retail facility typically far outweighs the cost of providing services to that facility. In contrast, the property tax generated by housing developments typically does not. This phenomenon, often called the fiscalization of land use, makes zoning for and attracting retail establishments more fiscally attractive to local officials than zoning for housing. This bill tries to encourage zoning for housing by addressing this fiscal inequity. It does so by allowing the amount of sales tax that likely would have been generated by a continued retail use on now idle land to be awarded as a grant to a local government that rezones the land for workforce housing instead.
- 5) **Policy Committee Amendments.** The author agreed to a set of amendments in the Assembly Housing Committee that add labor-related requirements to the bill regarding the use of prevailing wage, project labor agreements and a skilled-and-trained workforce. As a result of this agreement, several labor advocates testified to removing their opposition to the bill. Those amendments will be adopted if and when this bill passes off this committee’s suspense file.
- 6) **Related Legislation.**

AB 3107 (Bloom), of this legislative session, would require cities and counties to allow housing as an authorized use on commercially-zoned land, until January 1, 2030, under specified circumstances. AB 3107 is pending in the Senate Housing Committee.

SB 1385 (Caballero), of this legislative session, enacts the Neighborhood Homes Act, which requires a housing development project to be deemed an authorized use on a neighborhood lot zoned for office or retail commercial use. SB 1385 failed passage in the Assembly Local Government Committee.