

SENATE THIRD READING
SB 1299 (Portantino)
As Amended August 25, 2020
Majority vote

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.

Major Provisions

- 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 all of the units are offered at an affordable cost or rent to lower- and moderate-income households (up to 120 percent of Area Median Income (AMI)). All rental units must be 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:
 - a) Rezoned one or more idle sites, as defined, to instead allow the development of workforce housing as a use by right;
 - b) Required that the development be built utilizing specified labor standards, generally including a skilled and trained workforce paid prevailing wages;
 - c) Approved and issued a certificate of occupancy for a workforce housing development on each site rezoned; and
 - d) Applied to HCD for grant funds and provide documentation that the city or county has complied with all requirements in this bill.
- 4) Requires the grant amount awarded to each eligible city or county be one lump sum equal to seven times 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.

COMMENTS:

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 meet 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 less than 120 percent of the median 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 utilizing a workforce that meets specified labor provisions. 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 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.

According to the Author:

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."

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 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 is part of a general pattern of legislation that would override local control over zoning.

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FISCAL COMMENTS:

According to the Assembly Committee on Appropriations:

- 1) HCD estimates, subject to an appropriation by the Legislature, administrative costs of up to \$1.2 million (General Fund (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. 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.

VOTES:

SENATE FLOOR: 39-0-1

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Jones, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Stern

ASM HOUSING AND COMMUNITY DEVELOPMENT: 7-0-1

YES: Chiu, Diep, Gabriel, Gloria, Limón, Bonta, Quirk-Silva

ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 13-0-5

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

ABS, ABST OR NV: Bigelow, Megan Dahle, Diep, Fong, Voepel

UPDATED:

VERSION: August 25, 2020

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