

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1174 (Grayson) – As Amended April 6, 2021

Policy Committee:	Housing and Community Development	Vote:	8 - 0
	Local Government		7 - 0

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

SUMMARY:

This bill makes clarifying changes to the ministerial development approval process created by SB 35 (Wiener, Chapter 366, Statutes of 2017). Specifically, this bill:

- 1) Requires, when an application for modifications is submitted for a development project approved pursuant to the SB 35 process, both of the following to occur:
 - a) The time-period for which the project approval is valid must be extended for the number of days between the submittal of a modification request and the date of its final approval, plus an additional 180 days. If litigation is filed relating to the modification request, the time must be further extended while the litigation is pending.
 - b) Any objective building standards adopted after the application for modifications was submitted must be agreed to by the development proponent if the modification application is submitted after the first building permit application.
- 2) Requires a local government to consider an application for subsequent permits based upon the objective standards specified in any state or local laws in effect when the original development application was submitted, unless the development proponent agrees to a change in objective standards.
- 3) Declares all the above changes apply retroactively to developments approved and subsequent permits submitted prior to January 1, 2022.

FISCAL EFFECT:

- 1) Minor and absorbable costs to HCD to answer technical questions from local governments and developers and update guidelines for the streamlined ministerial approval process, if done as part of the next scheduled timeline revision.
- 2) Unknown state-mandated local costs to local agencies to make the changes required by this bill. 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.

COMMENTS:

- 1) **Purpose.** This bill seeks further the intent of SB 35 by addressing loopholes in the law that anti-growth community groups and others exploit through litigation to delay or halt housing projects. According to the author:

Ambiguities in the law have been exploited by anti-growth community groups to delay and derail desperately needed housing projects. For example, SB 35 streamlining approvals are currently valid three years after the project is approved. Some jurisdictions have used lawsuits to extend the project timeline beyond this window, and then revoke the streamlining provisions. Another issue arises when jurisdictions require a project to comply with objective standards that were not in place at the time of project approval. This can compel a project proponent to seek a modification, which can further delay or derail the project.

To address these challenges, [this bill] specifies that the “shot clock” for a development or modifications is paused when a project is sued, and clarifies that subsequent permit applications must only meet the objective standards that were in place when the project was initially approved. These changes are essential to ensure to facilitate the timely construction of housing at all income levels to meet California’s critical housing needs.

- 2) **Background.** SB 35 (Wiener), Chapter 366, Statutes of 2017, 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. To access the streamlined process, the developer must demonstrate the development meets a number of requirements including the development has a percentage of affordable housing units, 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.

Since adoption of SB 35, several bills have been passed to provide further clarity and address areas of contention. This includes AB 831 (Grayson), Chapter 194, Statutes of 2020, which added a process for projects to be modified after their approval.

This bill amends the modification process created by AB 831 by extending the project approval period to reflect the time necessary to approve the modification, the need for any new building permits, as well as any litigation that might occur.

This bill also allows a developer who has submitted their first building permit application to determine whether to apply an updated building code or the previous building code to their modification. Finally, this bill allows a developer to agree to updated objective standards for any subsequent permits required for the project, rather than the objective standards that were in effect when the original development application was submitted. All three of these changes are retroactively applicable to existing projects.