

ASSEMBLY THIRD READING

AB 1174 (Grayson)

As Amended April 6, 2021

Majority vote

SUMMARY

Makes changes to the streamlined, ministerial process created by SB 35 (Wiener), Chapter 366, Statutes of 2017.

Major Provisions

- 1) Requires, for a development project approved pursuant to the SB 35 process that submits a modification to the project, the following:
 - 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. This change applies retroactively to developments approved prior to January 1, 2022; and
 - 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. This change applies retroactively to developments approved prior to January 1, 2022.
- 2) Requires a local government to consider an application for subsequent permits based upon the objective standards specified in any state or local laws that were in effect when the original development application was submitted, unless the development proponent agrees to a change in objective standards. This change applies retroactively to subsequent permits submitted prior to January 1, 2022.

COMMENTS

SB 35 (Wiener) of 2017: In 2017, SB 35 (Wiener) 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 for housing developments, the developer must demonstrate that the development meets a number of requirements including that the development includes 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. Localities must provide written documentation to the developer of a failure to meet the specifications for streamlined approval within a specified period of time. If the locality does not meet those deadlines, the development is deemed to satisfy the requirements for streamlined approval and must be approved by right.

Existing law requires the Department of Housing and Community Development (HCD) to determine when a locality is subject to the streamlining and ministerial approval process in SB 35 based on the number of units issued building permits as reported in the annual production report local governments submit each year as part of housing elements. This determination occurs at the half way and end of the eight-year housing element planning period. If HCD

determines that a local government has not permitted enough units to meet its above moderate- and its lower income regional housing needs, a development must dedicate 10% of the units to lower income in the development to receive streamlined, ministerial approval. If the jurisdiction has permitted its share of above moderate-income housing but not its share of the lower income housing, then developments must dedicate 50% of the units for lower income to have access to streamlining.

SB 35 Projects: There is currently no reliable data available on the utilization of SB 35 since its implementation in 2018. However, anecdotal evidence suggests that it has become an effective tool for facilitating the development of projects that are at least 50% affordable to lower income households. By contrast, evidence also suggest that SB 35 has not been widely utilized for market-rate housing that are less than 50% affordable to lower income households. One possible explanation is that HCD has determined that SB 35 currently does not apply to such market-rate housing in many cities in expensive coastal markets, where projects could absorb the additional costs associated with this process.

Because SB 35 created a new development process, there has been a learning curve for both the local governments and the developers. At times the process has turned contentious, resulting in multiples lawsuits. 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 would amend 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 permit, as well as any litigation that might occur. It would also allow a developer that has already 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 would also allow 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 would be retroactively applicable to existing projects, enabling them to address the challenges that have arisen as they navigate this still relatively new process.

According to the Author

"The legislature has made enormous effort to dramatically increase our housing supply. However, 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, AB 1174 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."

Arguments in Support

Supporters of this bill argue that SB 35 was a key solution to addressing the housing crisis, and that this bill is necessary to ensure its successful implementation. According to the Bay Area Council (one of the bill's sponsors), "ambiguities in the law have created loopholes that anti-growth community groups can exploit through litigation to delay or halt housing projects. AB 1174 closes these loopholes to ensure that the law functions as intended."

Arguments in Opposition

The opponents of this bill, the Western Electrical Contractors, argue against the labor provisions already existing in SB 35, and do not raise objections related to the content of the bill itself.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 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.

VOTES**ASM HOUSING AND COMMUNITY DEVELOPMENT: 8-0-0**

YES: Chiu, Seyarto, Gabriel, Kalra, Kiley, Maienschein, Quirk-Silva, Wicks

ASM LOCAL GOVERNMENT: 7-0-1

YES: Aguiar-Curry, Lackey, Bloom, Ramos, Luz Rivas, Robert Rivas, Voepel

ABS, ABST OR NV: Boerner Horvath

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Friedman, Stone

UPDATED

VERSION: April 6, 2021

CONSULTANT: Steve Wertheim / H. & C.D. / (916) 319-2085

FN: 0000368