

## CONCURRENCE IN SENATE AMENDMENTS

AB 1174 (Grayson)

As Amended August 23, 2021

2/3 vote. Urgency

**SUMMARY**

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

**Senate Amendments**

- 1) Adds an urgency clause to this bill.
- 2) Make technical changes, including that:
  - a) "Development activity" includes permitted demolition and grading, rather than only vertical construction;
  - b) The extension of the project approval that must be granted when a developer requests a project modification only applies to the first requested modification;
  - c) In determining whether a project modification would allow local agencies to apply new objective development standards, these calculations must not include underground space; and
  - d) For specified large projects that submitted applications before 2019, the definition of "affordable rent" for 70 percent of the affordable units must use the definition of "affordable rent" used by the California Tax Credit Allocation Committee, rather than the one specified in the Health and Safety Code.
- 3) Amends the findings and declarations to clarify that it is the provision of affordable housing that is a matter of statewide concern and is not a municipal affair, rather than that the contents of this bill are unto themselves a matter of statewide concern.

**COMMENTS**

*SB 35:* SB 35 (Wiener) 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 for housing developments, the developer must demonstrate that the development meets a number of requirements. These include that the development provides 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 a 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 percent 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 percent 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 percent affordable to lower income households. By contrast, evidence also suggest that SB 35 has not been widely utilized for market-rate housing projects that are less than 50 percent 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 projects 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 make a series of technical changes to SB 35. These changes would be applicable to existing projects, including making changes that are retroactively applicable to previous decisions. Collectively, these changes are designed to enable these and future projects to avoid some of the pitfalls identified in this still relatively new process.

### **According to the Author**

"The legislature has made enormous efforts 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**

None on file.

## **FISCAL COMMENTS**

According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

## **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

### **ASSEMBLY FLOOR: 71-0-7**

**YES:** Aguiar-Curry, Arambula, Berman, Bloom, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Fong, Frazier, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

**ABS, ABST OR NV:** Bauer-Kahan, Bennett, Bigelow, Boerner Horvath, Flora, Friedman, Muratsuchi

### **SENATE FLOOR: 37-0-3**

**YES:** Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

**ABS, ABST OR NV:** Limón, Portantino, Stern

## **UPDATED**

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