

(Without Reference to File)

CONCURRENCE IN SENATE AMENDMENTS

AB 2011 (Wicks, et al.)

As Amended August 25, 2022

Majority vote

SUMMARY

Enacts the "Affordable Housing and High Road Jobs Act of 2022" to create a ministerial, streamlined approval process for 100% affordable housing projects in commercial zones and for mixed-income housing projects along commercial corridors, as specified. The bill would also impose specified labor standards on those projects, including requirements that contractors pay prevailing wages, participate in apprenticeship programs, and make specified healthcare expenditures.

Senate Amendments

- 1) Delay implementation to July 1, 2023, and sunset this bill's provisions on January 1, 2033.
- 2) Require HCD to conduct at least two studies of the outcomes of the bill by January 1, 2027 and January 1, 3031, respectively, that include the number of projects built, the number of units build, the jurisdictional and regional location of the housing, the relative wealth and access to resources of the communities in which they are built, the level of affordability, the effect on greenhouse gas emissions, and the creation of construction jobs that pay the prevailing wage.
- 3) Add an option for developers of mixed-income rental housing to provide 8% of the units for very low-income households and 5% of the units for extremely low-income households.
- 4) Require developers to provide relocation assistance for displaced small businesses.
- 5) Require a specified environmental assessment and mitigation of any hazards identified.
- 6) Allow local governments to exempt parcels from the bill if the local government identifies alternative sites that can be developed by right pursuant to the by criteria of this bill, such that there is no overall loss in units, no loss in affordable units, and that the new sites affirmatively further fair housing.
- 7) Make certain changes to conform to recent or proposed amendments to SB 35's (Umberg), Chapter 318, Statutes of 2021, ministerial process.
- 8) Specify that this bill cannot apply to the following:
 - a) Sites where a neighborhood plan does not permit housing, and defines neighborhood plans to include specific plans, areas plans, precise plans, master plans, and urban village plans;
 - b) Sites that include industrial uses or are identified in local general plans as being for industrial uses;

- c) Vacant sites in a very high hazard severity zone; and
 - d) Housing within 500 feet of a freeway or 3,200 feet of an oil or gas extraction facility or refinery.
- 9) Require, for a vacant site, that it does not contain tribal cultural resources that could be affected by the development and that were found pursuant to a consultation, and that those effects cannot be mitigated, as specified.
- 10) Specify that the 65 foot height limit within one-half mile of a major transit stop only applies in cities of greater than 100,000 and outside the coastal zone.
- 11) Enable a local government to require up to half of the ground floor of the new development be utilized as retail, and preclude development from using the density bonus process to avoid any local requirement to provide retail.
- 12) Allow local governments to adopt an ordinance to implement the bill, the adoption of which would not be subject to the California Environmental Quality Act (CEQA).
- 13) Require local agencies to report, in their Annual Progress Report to the Department of Housing and Community Development (HCD), whether projects have utilized the provisions of this bill, and other pertinent information.
- 14) Allow HCD to enforce the provisions of this bill, including referring violations to the Attorney General.

COMMENTS

California's Housing Crisis: California is in the midst of a housing crisis. Only 24% of households can afford to purchase the median priced single-family home – 50% less than the national average, and 33% less than at the start of the pandemic.¹ Over half of renters – and 80% of low-income renters – are "rent burdened," in households paying more than 30% of their income toward housing, which means they have less to pay for other essentials such as food, transportation, and health care.² In 2020, over 160,000 Californians experienced homelessness on a given night.³ Californians rank housing affordability and homelessness as the two most important issues for the state to address.⁴

A major cause of our housing crisis is the mismatch between the supply of housing and the need for housing. While there are various estimates of the size of this mismatch, they all concur that the deficit is in the millions of units. The Statewide Housing Plan adopted by HCD earlier this year, determined that, to address this mismatch, in the next eight years, California needs approximately 2.5 million units of housing, including one million units affordable to lower income households.⁵ That would require production of over 300,000 units a year. According to HCD, the state needs 180,000 units of housing built a year to keep up with demand – including

¹ [California Association of Realtors Housing Affordability Index](#). Data for the 3rd quarter of 2021.

² HCD, [California Statewide Housing Plan](#), February 2018, Table 1.2

³ [The 2020 Annual Homeless Assessment Report \(AHAR\) to Congress \(huduser.gov\)](#)

⁴ UC Berkeley's Institute of Governmental Studies, April 2022: <https://escholarship.org/uc/item/7sn293xs>

⁵ Data from [Roadmap Home 2030](#), California Housing Partnership Corporation and Housing California, 2021.

about 80,000 units of housing affordable to lower-income households. By contrast, production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing.⁶ This underproduction has further exacerbated our longstanding housing crisis.

There are myriad reasons that supply has not kept pace with demand, including that:

- 1) The demand for housing in California has been strong for decades;
- 2) There are limited places to build;
- 3) Local governments have made it difficult to build housing;
- 4) Housing is expensive to build; and
- 5) There is a deficit of residential construction workers.

Increasing the Affordability of Housing through the Affordable Housing and High Road Jobs Act of 2022: This bill, the Affordable Housing and High Road Jobs Act of 2022, is intended to build on and greatly accelerate the recent efforts by the state to facilitate the construction of more affordable housing. It would allow do so as follows:

Approval process: This bill would require housing to be "by right" if it conforms to the provisions below regarding affordability, location, objective standards, and labor. In being by right, it would not be subject to a local government's discretionary approval process and would be exempt from the California Environmental Quality Act. Local governments would be able to apply objective standards and design review processes as long as they do not conflict with the provisions in the bill and do not preclude development of the housing.

Affordability requirements: This bill would require that mixed-income rental projects make either 15% of their units affordable to lower-income households or 8% of their units affordable to very-low income households and 5% of the units affordable to extremely low-income households. This bill would require that mixed-income, for-sale projects make either 15% of their units affordable to lower-income households or 30% of their units affordable to moderate-income households. Affordable units would be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units. The option for deeply targeted affordable rental units could help people who are experiencing or at risk of homelessness secure stable housing without the need for public subsidy. The option for a for-sale project to direct 30% of its units to moderate-income households could result in a substantial increase in homeownership opportunities for that demographic.

Location requirements: This bill facilitates the development of two kinds of housing – 100% affordable housing, and mixed-income housing. To qualify to utilize the by right provisions of this bill, both kinds of housing projects must be located in zones where office, retail, or parking are a principally permitted use. Mixed-income housing projects would be limited to sites that abut a "commercial corridor," which is a local road with a right-of-way of 70 to 150 feet (generally, four to eight lanes). These commercial corridors are typically the location of strip

⁶ <https://www.hcd.ca.gov/policy-research/housing-challenges.shtml>

retail centers and parking lots. Directing new development along these existing thoroughfares can facilitate transit use and other non-vehicular modes of transportation.

By allowing housing in zones where residential development may not currently be permitted, this bill expands the potential sites where housing can be developed, while directing development away from existing residential neighborhoods – in particular, existing single-family neighborhoods.

This bill includes provisions that would preclude development on environmentally unsafe or sensitive area, per previously established objective standards. It would also require development to occur within infill areas, which would help reduce commutes and, commensurately, greenhouse gas emissions.

To protect existing communities, projects would not be allowed to demolish existing housing. Additionally, the development could not lead to the demolition of a historic structure. Small businesses would be paid to help relocate if their lease expired after a development proposal had been placed on their property. Local governments could choose to transfer the applicability of this bill to other parcels in their jurisdiction, as long as there was no net loss of overall or affordable housing, and the new sites were not generally located in lower-income communities than the existing sites.

Objective Standards: To utilize the by right provisions of this bill, housing projects would need to meet the objective standards specified in the bill. All projects would need to be multi-family projects where no more than one-third of the space can be for a non-residential use.

For 100% affordable projects, the residential density would need to meet or exceed the density considered geographically appropriate for affordable housing projects in Housing Element Law. Generally, that density is 30 units per acre in urban areas, 20 units per acre in suburban areas, and 10 units per acre in rural areas. The site must otherwise meet the local government's height limits, objective zoning standards, and objective design review standards.

Mixed-income housing projects would need to meet or exceed the density and height standards in the table below. These standards are distinguished by the type of community, width of the commercial corridor, and proximity to transit. The local government may allow higher densities and height limits at their discretion.

Location	Metropolitan Jurisdiction		Non-Metropolitan Jurisdiction	
	Minimum Project Density	Minimum Project Height	Minimum Project Density	Minimum Project Height
Commercial corridors with a width of 70' to 100'	40 units/acre	35 feet	30 units/acre	35 feet
Commercial corridors with a	60 units/acre	45 feet	50 units/acre	45 feet

width of 100' to 150'				
Commercial corridors within ½ mile of a major transit stop in cities > 100K	80 units/acre	65 feet	70 units/acre	65 feet
Site of less than one acre	30 units/acre	As applicable per street width	20 units/acre	As applicable per street width

Mixed-income projects must meet specified setback standards regarding any frontages along the commercial corridor, any side street, and rear property lines. These setback standards are designed to focus the development along the commercial corridors, and away from the rear of the property.

The bill does not allow a local government to require parking for mixed-income projects, except that projects must meet requirements around accessible parking for people with disabilities, electric vehicle parking spaces, and bicycle parking. Developers would be allowed to determine the amount of parking needed to meet the demands of the new residents.

Overall Impact on Housing and the Environment: A recent analysis of the bill determined that it would increase the amount of potential units in the state by 10 million, and the amount of units that would be economically feasible to build under current conditions by 1.6-2.4 million.⁷ Compared to typical greenfield housing development, housing built along commercial corridors would use 40% less water, drive 33% fewer miles, and produce up to 45% fewer greenhouse gas (GHG) emissions.

California's Construction Workforce Deficit: During California's post-World War II boom, approximately 300,000 units were built per year.⁸ Between 1975 – 1990, nearly 200,000 units were built a year.⁹ That number is now less than 100,000 units a year.¹⁰ As discussed above, there are numerous reasons for the sharp decline in housing production. These reasons alone could have led to a reduction in the construction workforce. But, in addition, the 2008 Great Recession, led to a steep decline in the workforce as construction ceased and workers moved to others states to find jobs.

⁷ <https://urbanfootprint.com/ab2011-analysis/>

⁸ State Building and Construction Trades Council, *Housing on the High Road*, 2019, as summarized here: <https://norcalapa.org/2019/03/taking-the-high-road-to-fix-californias-broken-housing-production-system/>

⁹ Ibid

¹⁰ <https://www.hcd.ca.gov/apr-data-dashboard-and-downloads>

The remaining workforce has also been deskilled, due to a sharp decline in the pay and benefits associated with homebuilding jobs. The construction workforce used to produce 1.4 units per worker per year but has been below 1.0 units per worker per year for the past 15 years.¹¹

Not only is the workforce smaller and less skilled than it needs to be, it is not necessarily well positioned for growth, as it is difficult to attract new workers. The work is physically demanding and can require odd and long hours, both at work and commuting to work. It can be economically challenging as well, as construction work is seasonal and vulnerable to economic downturns, with workers face twice the earnings volatility.¹² The pay and benefits are often not attractive enough to overcome those risks, as residential construction workers earn 24% less per year than other jobs, and less than half have health insurance coverage at work.¹³ A significant number of workers are misclassified as independent contractors, which reduces their earnings by about a third.¹⁴ Wage theft is an even more substantial issue, as paying workers off the books is a common practice in construction, resulting in those workers having their earnings reduced in half.¹⁵ Finally, the traditional pathways to the construction workforce have been eroded – high schools have less vocational training courses, federal policy has restricted the influx of new immigrants, and high housing costs dissuade workers from moving to California from other states.

Rebuilding the Residential Workforce through the Affordable Housing and High Road Jobs Act of 2022: This bill would make it easier to build housing, ensures that the workers who build that housing are well compensated, and provides opportunity for job training to grow the skilled construction workforce.

This bill would require compensation consistent with standards in place for public works projects by requiring projects to pay prevailing wages. The prevailing wages are the most common wage found in a region for a construction craft, and are usually based on rates specified in collective bargaining agreements between employers and unions. Prevailing wages are established by the Director of the Department of Industrial Relations (DIR), according to the type of work and location of the project, and published on DIR's website.¹⁶ The prevailing wage encompasses an hourly pay, as well as compensation for other benefits should the employer not provide them, including health care, vacation, and pension.

This bill includes an enforcement component by the Labor Commissioner, an underpaid workers, or a joint labor-management cooperation committee established under federal law. These provisions would help bolster enforcement capacity of the labor standards and help ameliorate concerns about wage theft.

This bill requires that all contractors on projects of 50 or more units participate in a state-approved apprenticeship program or request the dispatch of apprentices from a program. Construction trades apprenticeships result in the elevation of most participating construction

¹¹ Ibid

¹² Smart Cities Prevail, *Rebuilding California: The Golden State's Housing Workforce Reckoning*, 2019: https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf

¹³ Ibid

¹⁴ UC Berkeley Labor Center, *The Public Cost of Low-Wage Jobs in the US Construction Industry*, 2022: <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-californias-construction-industry/>

¹⁵ Ibid.

¹⁶ <https://www.dir.ca.gov/public-works/prevailing-wage.html>

workers' wages to living wage levels. As such, this provision would help ensure that these projects train the next generation of skilled craftspeople, so that over time the residential construction workforce is large enough to build the housing we need to end the housing crisis.

This bill allows for a locally negotiated Collective Bargaining Agreement to supersede the labor provisions in the bill. Collective Bargaining Agreements are agreements reached between the employer and the labor union that will govern the employment for the employee-members of that labor union.

According to the Author

"This bill combines some of the best ideas advanced in the Legislature over the last several years for promoting affordable housing development with a requirement to create 'high road' jobs. To effectively take on our state's housing issues, I firmly believe we need to do both. This legislation gives us all the opportunity to work together toward our shared goal: Building more affordable housing for struggling Californians, while also growing the thriving, high-wage construction workforce every community needs."

Arguments in Support

Supporters of the bill include groups that represent construction workers, groups that support the development of affordable housing, and groups that support an overall increase in the housing supply.

Groups that represent construction workers, including the Northern California Regional Conference of Carpenters, the Southwest Regional Conference of Carpenters, and affiliated groups, argue that the prevailing wage requirements and enforcement provisions in the bill would benefit workers while the housing provisions in the bill would help put those workers to work. According to the California Conference of Carpenters (a co-sponsor of the bill), the bill "will open the door to middle-class, blue-collar careers for young workers who will actually be able to live in, and eventually even own, the affordable housing they build."

Groups that support the development of affordable housing, including the California Housing Consortium (a co-sponsor of the bill) argue that the bill would rapidly accelerate the production of affordable housing. They write that the bill "will expand climate-friendly infill affordable housing opportunities for struggling families, seniors, workers, and veterans – while also growing a thriving, well-paid, middle-class construction workforce."

Groups that support an overall increase in the housing supply argue that the bill is necessary to help overcome the state's deficit of 2.5 million housing units. According to the California Apartment Association, "By opening new sites to housing, AB 2011 would rapidly accelerate housing production at all income levels – particularly for lower income Californians."

Arguments in Opposition

Opponents of this bill include groups that represent construction workers and cities.

The State Building and Construction Trades Council (SBCTC) and affiliated groups, argue that the bill should require the utilization of a skilled and trained workforce, as defined in labor law, that would in effect require a certain percentage of each construction craft and trade to be unionized unless the project is subject to a Project Labor Agreement. They argue that, absent these provisions, the bill provides a path to developer profits with little protections for workers and meaningful input from community members. According to the SBCTC, "We remain

opposed to any effort that would create a statewide right to develop mostly market-rate and luxury housing without, at a very minimum, basic community protections, including the requirement to use a skilled and trained workforce and pay area prevailing wages."

The cities in opposition to the bill argue that it would remove local control and the ability of cities to determine the adequacy of sites for housing and the ability to provide affiliated infrastructure. They also express concern over a potential reduction in tax revenue from the loss of commercial properties.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) HCD estimates ongoing costs of \$204,000 annually for 1.0 PY of staff to coordinate with local governments, provide guidance and technical assistance, and manage enforcement activities. HCD estimates additional costs of \$102,000 in contract costs each year in 2023-24 and 2025-25 to develop and revise guidelines for developers and local jurisdictions related to the new streamlining and ministerial approval provisions. (General Fund)
- 2) The Department of Industrial Relations estimates costs of approximately \$3.8 million in the first year and \$3.6 million annually ongoing for oversight and enforcement activities related to prevailing wage and apprenticeship standards on projects constructed pursuant to the provisions of this bill. There would also be penalty revenue gains, potentially in the hundreds of thousands of dollars annually, to partially offset these costs. Actual costs and penalty revenues would depend upon the number of qualifying projects constructed under this bill and the number of complaints and referrals to the Division of Labor Standards and Enforcement that require enforcement actions, investigations, and appeals. (State Public Works Enforcement Fund)
- 3) Unknown local mandated costs. While the bill could impose new costs on local agencies to revise planning requirements for certain developments, and providing for streamlined and expedited review of those projects, 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. (Local funds)

VOTES:

ASM HOUSING AND COMMUNITY DEVELOPMENT: 7-1-0

YES: Wicks, Carrillo, Gabriel, Kalra, Kiley, Quirk-Silva, Ward

NO: Seyarto

ASM APPROPRIATIONS: 11-1-4

YES: Holden, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow

ABS, ABST OR NV: Bryan, Megan Dahle, Davies, Fong

ASSEMBLY FLOOR: 48-11-19

YES: Bauer-Kahan, Bennett, Bloom, Bryan, Calderon, Carrillo, Cervantes, Cooper, Cunningham, Megan Dahle, Daly, Flora, Mike Fong, Fong, Friedman, Gabriel, Cristina Garcia,

Eduardo Garcia, Gipson, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Mathis, Mayes, McCarty, Medina, Mullin, Quirk, Quirk-Silva, Ramos, Reyes, Robert Rivas, Rodriguez, Salas, Santiago, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO: Aguiar-Curry, Bigelow, Choi, Cooley, Nguyen, Patterson, Seyarto, Stone, Valladares, Voepel, Waldron

ABS, ABST OR NV: Arambula, Berman, Boerner Horvath, Mia Bonta, Chen, Davies, Gallagher, Gray, Irwin, Lee, Low, Maienschein, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Luz Rivas, Blanca Rubio, Smith

UPDATED

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