

SENATE THIRD READING  
SB 290 (Skinner)  
As Amended August 16, 2021  
Majority vote

## SUMMARY

Makes various changes to density bonus law, including providing additional benefits to housing developments that include moderate-income rental housing units.

### Major Provisions

- 1) Requires a planning agency to report in the housing element annual progress report (APR) the number of units for lower income students that were included in a student housing development for which a developer received a density bonus.
- 2) Makes a student housing development containing at least 20% of the units for lower-income students, as defined, eligible for one incentive or concession.
- 3) Expands the types of for-sale moderate-income housing units that can benefit from a density bonus by deleting the existing law requirement that the units be in a "common interest development."
- 4) Allows moderate-income housing developments that include 40% moderate income for-sale housing and are within in one-half mile of a major transit stop to receive a parking reduction of 0.5 parking spaces per bedroom.
- 5) Defines "total units" or "total dwelling units" as the calculation of the number of units that:
  - a) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus; and
  - b) Includes a unit designated to satisfy an inclusionary zoning requirement of a local agency.

Makes findings and declarations that it is intent of the Legislature to make modifications to the Density Bonus Law to further incentivize the construction of very low-, low-, and moderate-income housing units. States that it is further the intent of the Legislature in making these modifications to the Density Bonus Law to ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of adequate levels of affordable housing. States that the Legislature further intends that these modifications will ensure that the Density Bonus Law creates incentives for the construction of more housing across all areas of the state.

## COMMENTS

*Density bonus law:* Density bonus law was originally enacted in 1979, to help address a shortage of affordable housing. Over 40 years later, the state faces the same if not worse affordable housing challenges. Density bonus is a tool to encourage the production of affordable housing by market rate developers, although it is used by developers building 100% affordable developments as well. In return for including affordable units in a development, developers are

given an increase in density over a city's zoned density, concessions and incentives, and reductions in parking. The increase in density and concessions and incentives are intended to financially support the inclusion of the affordable units.

All local governments are required to adopt an ordinance that provides concessions and incentives to developers that seek a density bonus on top of the zoned density in exchange for including extremely low-, very low-, low-, and moderate-income housing. In addition to an increase in density, a developer can request concessions and incentives under density bonus law to reduce the cost of the development and support the inclusion of the affordable housing units. Failure to adopt an ordinance does not relieve a local government from complying with state density bonus law.

*Statewide housing needs:* According to the California Housing Partnership Corporation, the state currently has an estimated 1.3 million-unit shortfall of rental units affordable to very low- and extremely low-income households. Four out of five extremely low-income households pay over half of their income in rent, as do nearly half of very low-income households. In October 2019, the California Housing Partnership Corporation published a report that compared the median asking rent data on Craigslist for two-bedroom apartments with regionally adjusted 2019 area median incomes. The report found that very low-income households earning 50% area median income (AMI) can afford modest rents in only one county in California; households earning 60% AMI could afford modest rents in 11 counties; 80% AMI could afford modest rents in 29 counties; and households earning 100% AMI (e.g., at median income level) could afford modest rents in all but 6 counties, primarily in the State's high-cost coastal regions. In addition, census data reveals that only about 10% the state's workforce makes between 80 and 120% of AMI. In many parts of the state, teachers, licensed vocational nurses, and paralegals, for example, earn less than 80% AMI. This is particularly true in high cost and coastal areas of the state.

*Moderate-income housing and density bonus:* State density bonus law allows a developer to receive a density bonus for moderate-income for-sale housing. Developers can receive a density bonus if they offer 10% of the units in a common interest development for-sale to moderate-income owners. This bill would expand the types of housing options that could utilize density bonus by eliminating the reference to common interest developments. In addition, the bill expands the existing parking incentives for lower income housing to moderate income housing. A developer that restricts 40% of the units in a development to moderate income could reduce parking to 0.5 spaces if the development is within one-half mile of transit.

*Incentives for student housing:* Existing law (SB 1227 (Skinner), Chapter 937, Statutes of 2018) requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units agrees to construct a student housing development that will set aside at least 20% of the total units for lower-income students, as specified. This bill seeks to further incentivize housing for lower-income students by additionally making such a development eligible for one incentive or concession.

*Related legislation:* SB 1085 (Skinner) of 2020 was almost identical to this bill. SB 1085 died on the Senate Floor because the Senate ran out of time to concur in the Assembly amendments.

### **According to the Author**

"California's Density Bonus Law is a unique tool that incentivizes developers to build more affordable housing. However, unintended flaws in the program result in many cities underutilizing the density bonus tool or not using it at all. SB 290 improves and clarifies the

state's Density Bonus statute to ensure it achieves its intended outcome of increasing affordable housing production."

### **Arguments in Support**

Supporters argue that this bill will incentivize the production of much needed moderate income housing.

### **Arguments in Opposition**

Opponents argue that this bill undermines existing local control, incentivizes moderate income housing over lower income housing by creating similar parking reductions to lower income housing density bonus developments

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

- 1) The Department of Housing and Community Development (HCD) estimates costs of \$95,000 (General Fund) annually for two years to update guidance documents for the density bonus law, investigate violations and to provide technical assistance and outreach education to local agencies and affordable housing developers.
- 2) Local costs of an unknown amount to make the necessary changes and provide for the additional incentives as 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**

### **SENATE FLOOR: 33-4-3**

**YES:** Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

**NO:** Bates, Borgeas, Jones, Nielsen

**ABS, ABST OR NV:** Dahle, Grove, Melendez

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

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

### **ASM LOCAL GOVERNMENT: 7-1-0**

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

**NO:** Boerner Horvath

### **ASM APPROPRIATIONS: 13-0-3**

**YES:** Lorena Gonzalez, Bigelow, Bryan, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Stone, Quirk, Akilah Weber

**ABS, ABST OR NV:** Eduardo Garcia, Robert Rivas, McCarty

**UPDATED**

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