

ASSEMBLY THIRD READING

AB 939 (Schultz)

As Amended January 15, 2026

Majority vote

SUMMARY

Revises Density Bonus Law (DBL) to allow qualifying nonprofit corporations to purchase for-sale units developed under DBL without waiting 180 days.

Major Provisions

- 1) Allows nonprofit corporations that receive a welfare exemption to purchase for-sale units developed under DBL without waiting 180 days after the issuance of a certificate of occupancy, if the units are subsequently sold to, and occupied by, extremely low, very low, and lower-income families participating in a below-market interest rate loan program.
- 2) Requires the nonprofit specified in 1) above to incorporate within their contracts for initial purchase a repurchase option that requires a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser pursuant to an equity sharing agreement or affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for low income housing for at least 45 years for owner-occupied housing units and will be sold or resold only to persons or families of extremely low, very low, and lower income.
- 3) Subjects the purchase of for-sale units developed through DBL that are purchased by a qualifying nonprofit to an equity sharing agreement, consistent with the existing provisions of DBL.

COMMENTS

Density Bonus Law: California's DBL, originally enacted in 1979, is a key state policy aimed at addressing the financial challenges of building affordable housing, particularly in high-cost markets. Given the state's elevated land and construction costs, the private market often struggles to deliver housing that is affordable to low- and moderate-income households without public subsidy.

DBL closes some of the financial gaps associated with building affordable housing by allowing developers to build more units than local zoning codes typically allow, known as a "density bonus," in exchange for reserving a certain percentage of the housing units as affordable. To qualify for a density bonus, a project must include one of several affordability options, including: providing rental units for lower-income or very low-income households, for-sale units for moderate-income households, or homes targeting specific populations such as seniors, transition-age foster youth, disabled veterans, or lower-income college students. Under DBL, when a mixed-income housing development includes a minimum percentage of affordable units, such as 5% very low-income or 10% lower-income, it becomes eligible for a density bonus starting at 20%, with the potential to increase the project's density up to 50%, depending on the proportion of affordable units provided. 100% affordable projects can qualify for up to an 80% density bonus, or unlimited density if the proposed development is within ½ mile of a major transit stop or located in a very low vehicle miles travelled area.

Under DBL, developers are also entitled to receive additional benefits, including up to five regulatory incentives or concessions, such as relaxed design standards, increased floor area ratio (FAR), and reduced parking requirements if the concession or incentive would result in identifiable and actual cost reductions for the project and would not have specific, adverse impacts on public health or safety.

This increased density and flexibility provided by DBL allows the fixed costs of development to be spread across more units, helping to offset the lower financial returns from the deed-restricted affordable units, and reducing the need for direct public subsidy. It also helps to mitigate local standards that would render a qualifying DBL project financially infeasible in order to bolster the state's housing production pipeline. In practice, DBL plays a critical role in the state's housing strategy, both by reducing development costs and by increasing the overall supply of housing at all income levels, particularly in communities that might otherwise see little affordable housing development. By leveraging regulatory flexibility instead of direct public funding, DBL offers a cost-effective mechanism to stimulate the production of both mixed-income and 100% affordable housing projects throughout California.

Qualified Nonprofit Purchase of DBL For-Sale Units: All affordable rental units built under DBL must be deed-restricted for at least 55 years to ensure long-term affordability. For-sale affordable units constructed pursuant to DBL are subject to a separate affordability and resale framework that requires each unit used to qualify for the density bonus to be initially sold and occupied by a very low-, low-, or moderate-income household at an affordable housing cost and subject to an equity-sharing agreement that governs resale of the unit regardless of the identity of the purchaser. If the unit is not purchased by an income-qualified household within 180 days of issuance of the certificate of occupancy, DBL allows the unit to be purchased by a qualified nonprofit housing corporation that meets specified federal and state eligibility criteria and whose primary mission is the development and preservation of affordable homeownership housing in California. Units acquired or developed by a qualified nonprofit must be subject to right to repurchase options or affordability restrictions that preserve the unit as owner-occupied affordable housing for at least 45 years and limit resale to income-qualified households, and, in those cases, DBL permits the local government to contract with the nonprofit to assign responsibility for recapture of the initial public subsidy and proportionate share of appreciation, provided all proceeds are reinvested in lower-income homeownership within the local jurisdiction.

AB 323 (Holden), Chapter 738, Statutes of 2023, limited the ability of developers to sell deed-restricted units intended for owner-occupancy to purchasers who would rent the unit. The bill sought to ensure that low-income families can realize the dream of homeownership, rather than allowing investors to use DBL to change income-restricted owner-occupancy units into rental units. AB 323 (Holden) specified that for-sale units must be sold to, not just occupied by, income-qualified households. AB 323 (Holden) also established the 180-day hold period between issuance of a certificate of occupancy and when a qualified nonprofit could purchase the for-sale unit under DBL, and added the following more stringent parameters around which nonprofits are qualified to purchase for-sale units:

- 1) The nonprofit must have a determination letter from the Internal Revenue Service affirming its tax-exempt status, and must not be a private foundation.

- 2) The nonprofit must be based in California, and all of the nonprofit's board members must have their primary residence in California.
- 3) The primary activity of the nonprofit is the development and preservation of affordable homeownership housing in California that incorporates within their contracts for initial purchase a repurchase option that requires a subsequent purchaser of the property that desires to resell or convey the property to offer the qualified nonprofit corporation the right to repurchase the property prior to selling or conveying that property to any other purchaser pursuant to an equity sharing agreement.

While AB 323 (Holden) intended to ensure that qualified income-restricted buyers have the first opportunity to purchase DBL units without competing with speculative investors or non-certified nonprofits, developers have shared anecdotal evidence that they sometimes struggle to find income-qualified buyers for for-sale units developed through DBL, leaving these affordable for-sale units sitting vacant, generating carrying costs and marketing costs for the homebuilder, before they can transfer the title to a qualified nonprofit to manage the initial sale to a low-income buyer.

This bill would amend DBL to allow nonprofit corporations that receive a welfare exemption to purchase for-sale units developed under DBL without waiting 180 days after the issuance of a certificate of occupancy, so long as those units purchased by the nonprofit are sold to low-income families who participate in a below-market interest rate loan program. These organizations, like Habitat for Humanity and Self-Help Enterprises, are currently prohibited from partnering with market-rate homebuilders early in the planning process to create a pipeline of low-income for-sale homes due to the 180-day hold period. These nonprofit affordable housing organizations across California maintain lists of pre-qualified low-income families with approved financing, and ready to purchase affordable homes, and these units are often built by the nonprofit to be immediately sold to a low-income family upon issuance of the certificate of occupancy.

In doing so, this bill seeks to facilitate the sale and construction of for-sale affordable units under DBL by allowing qualified nonprofits to purchase these units sooner, allowing them to be sold to and occupied by extremely low, very low, or lower income families who participate in a below-market interest rate loan program, rather than requiring them to sit vacant for approximately half of a year before the unit can be sold if an income-qualified buyer does not buy the unit. In alignment with the existing structure for nonprofit ownership under DBL, nonprofits would be required to incorporate within their contracts for initial purchase a repurchase option that requires the buyer of the property, at the time of resale, to offer the nonprofit the right to repurchase the property before selling the home to any other purchaser, as established via an equity sharing agreement or affordability restrictions that requires the home to be preserved for lower income housing for at least 45 years and will be sold or resold only buyers with extremely low, very low, or lower income.

This bill would otherwise maintain the provisions of AB 323 (Holden) to limit the eligibility of who may purchase an income-restricted unit under DBL. Opponents of this measure maintain that allowing nonprofits to purchase the unit at the same time as other prospective buyers may result in owner-occupants having to compete with corporations seeking to purchase units intended for family occupancy.

According to the Author

"Nonprofit affordable housing organizations across California work directly with lower income households at the community level building awareness, providing first-time buyer education and increasing access to affordable housing opportunities, including maintaining long lists of pre-qualified families ready to purchase affordable homes. These organizations specialize in complex financing, compliance with long-term affordability covenants, and homeowner readiness. Allowing them to acquire affordable units during entitlement, prior to the completion of construction or immediately thereafter would achieve the original intent of the law—ensuring homes are sold to qualified, low-income households, affordably, effectively and efficiently.

AB 939 provides a targeted, no-cost fix to streamline affordable homeownership by removing the 180-day resale restriction in state law, if the developer is under contract with a nonprofit affordable housing organization for the transfer of units to be sold to low-income individuals directly. Under this bill, income-restricted ownership units could be sold immediately to qualified nonprofit affordable housing organizations rather than sitting vacant, after construction for 180 days. This allows developers to reduce holding and marketing costs while ensuring that homes reach income-qualified families more efficiently.

Most importantly, AB 939 maintains all existing affordability covenants and resale restrictions on these low-income units, guaranteeing that these homes remain affordable for at least 45 years, as already required by existing law. By enabling mission-driven nonprofits and private developers to collaborate more effectively, the bill accelerates the creation of affordable homeownership supply without any fiscal impact to the state."

Arguments in Support

Habitat for Humanity California, the bill sponsor, writes in support: "AB 939 provides a targeted and commonsense fix by removing the 180-day resale restriction in state law, if the developer is partnering with a nonprofit affordable housing organization for the transfer of units to be sold to low-income individuals directly. This change reduces unnecessary holding and marketing costs for developers while ensuring homes reach low-income families more efficiently. Importantly, AB 939 preserves all existing affordability covenants and resale restrictions, guaranteeing these homes remain affordable for at least 45 years. By enabling earlier collaboration between mission-driven nonprofits and developers, the bill accelerates affordable homeownership opportunities without any fiscal impact to the state."

Arguments in Opposition

The California Association of Realtors writes in opposition: "AB 939 seeks to reverse amendments negotiated with the bill's sponsor to permit corporate nonprofits to purchase deed restricted, density bonus units if a qualified buyer did not purchase the for-sale unit intended for owner occupancy within 180 days of construction. This bill, as amended, proposes to instead allow these corporations to purchase these units ahead of a qualified buyer, effectively undoing the legislation C.A.R. sponsored with Assemblymember Holden in 2023 (AB 323). If enacted, the bill allows corporate nonprofits to control all for sale deed restricted units acting as a developer, dual unlicensed real estate agents and lenders simultaneously for buyers seeking to obtain the dream of homeownership, without independent representation locking them into contracts which results in little to no equity growth for the occupant owner during their term of ownership."

FISCAL COMMENTS

According to the Assembly Committee on Appropriations:

- 1) The Department of Housing and Community Development anticipates minor and absorbable General Fund costs to update guidance regarding DBL and provide technical assistance to local agencies.
- 2) Local costs of an unknown, but likely minor amount to cities and counties to make changes to local planning and permitting processes to account for the new DBL requirements. These costs are not reimbursable by the state 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: 10-1-1**

YES: Haney, Patterson, Ávila Farías, Caloza, Garcia, Kalra, Lee, Quirk-Silva, Ta, Wicks

NO: Tangipa

ABS, ABST OR NV: Wilson

ASM APPROPRIATIONS: 13-2-0

YES: Wicks, Stefani, Calderon, Caloza, Dixon, Fong, Mark González, Krell, Bauer-Kahan, Pacheco, Pellerin, Solache, Ta

NO: Hoover, Tangipa

UPDATED

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