

THIRD READING

Bill No: AB 939
Author: Schultz (D), et al.
Amended: 8/20/26 in Senate
Vote: 21

SENATE HOUSING COMMITTEE: 8-0, 6/10/26

AYES: Arreguín, Cabaldon, Caballero, Cortese, Durazo, Grayson, Padilla, Pérez

NO VOTE RECORDED: Seyarto, Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 60-9, 1/29/26 - See last page for vote

SUBJECT: Housing development: density bonuses: affordability of for-sale units

SOURCE: Habitat for Humanity

DIGEST: This bill revises Density Bonus Law (DBL) to allow qualifying nonprofit corporations to purchase for-sale units developed under DBL without waiting 180 days, as specified.

Senate Floor Amendments of 8/20/26 move the contents of the bill to a stand-alone section in the Density Bonus and Other Incentives Chapter to avoid chaptering conflicts with other bills.

Senate Floor Amendments of 8/17/26 provide that a nonprofit utilizing the provisions of this bill, at a minimum, must provide a deed restriction to allow owners to recover their investments in home maintenance or improvements as a means to ensure the owner receives a minimum of 20% of the property value of the increase during their ownership, and makes other clarifying changes.

ANALYSIS:

Existing law:

- 1) Establishes DBL, which requires local governments to grant a density bonus when an applicant for a housing development, defined as a development containing “five or more residential units, including mixed-use developments,” seeks and agrees to construct a project that will contain at least one of the following:
 - a) 10% of the total units of a housing development for lower-income (LI) households;
 - b) 5% of the total units of a housing development for very low-income (VLI) households;
 - c) A senior citizen housing development or mobile home park;
 - d) 10% of the units as for-sale units in a common interest development (CID) for moderate-income households;
 - e) 10% of the total units for transitional foster youth, veterans, or persons experiencing homelessness;
 - f) 20% of the total units for lower-income students in a student housing development; or
 - g) 100% of the units of a housing development for lower-income households, except that 20% of units may be for moderate-income households.
- 2) Requires for-sale units built using DBL to be initially sold and occupied by VLI, LI, or moderate income households.
- 3) Provides that if the for-sale unit is not purchased by an income-qualified person or family within 180 days after issuance of a certificate of occupancy, a qualified nonprofit housing corporation meeting the following requirements may purchase the unit:
 - a) The nonprofit corporation is tax-exempt, as verified through determination letter from the Internal Revenue Service, and is not a private foundation;
 - b) The nonprofit corporation is based in California;
 - c) All board members of the nonprofit corporation have their primary residence in California; and
 - d) The primary activity of the nonprofit corporation is the development and preservation of affordable home ownership housing in California.

- 4) Requires a qualifying nonprofit meeting the definition in 3), above, to sell any for-sale owner-occupied units to VLI, LI, or moderate-income families, as specified.

This bill:

- 1) Allows nonprofit housing 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:
 - a) The units purchased by the nonprofit housing corporation are subsequently sold to and occupied by ELI, VLI, or LI households participating in a below market interest rate loan program; and
 - b) The below market interest rate loan program 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 and affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner-occupied housing units and will be sold or resold only to persons or families of ELI, VLI, or LI.
 - c) For purposes of this bill, an equity sharing agreement shall, at a minimum, include in the real property deed restriction a provision for homeowners to recover their investments in home maintenance or improvements, ensuring that the owner receives a minimum of 20% of the property value increase during the term of their ownership.
- 2) Provides that, if a unit is purchased or developed by a qualified nonprofit housing corporation, the local government may enter into a contract with the qualified nonprofit housing corporation under which the housing corporation would recapture any initial subsidy and proportionate share of the appreciation, as specified, both under existing statutory timelines and under the timelines afforded by this bill.

Background

Density bonus law. Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units

that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. DBL allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance, in exchange for affordable units. Allowing more total units permits the developer to spread the cost of the affordable units more broadly over the market-rate units. The idea of DBL is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy.

Under existing law, if a developer proposes to construct a housing development with a specified percentage of affordable units, the city or county must provide all of the following benefits: a density bonus; incentives or concessions (hereafter referred to as incentives); waiver of any development standards that prevent the developer from utilizing the density bonus or incentives; and reduced parking standards. To qualify for benefits under DBL, a proposed housing development must contain a minimum percentage of affordable housing. If one of these options is met, a developer is entitled to a base increase in density for the project as a whole (referred to as a density bonus) and one regulatory incentive. Under DBL, a developer is entitled to a sliding scale of density bonuses, up to a maximum of 50% of the maximum zoning density and up to four incentives, as specified, depending on the percentage of affordable housing included in the project. At the low end, a developer receives 20% additional density for 5% very low-income units or 20% density for 10% low-income units. The maximum additional density permitted is 50%, in exchange for 15% very low-income units or 24% low-income units. Additionally, specified 100% affordable housing projects may receive up to an 80% density bonus. The developer also negotiates additional incentives, reduced parking, and design standard waivers, with the local government. This helps developers reduce costs while enabling a local government to determine what changes make the most sense for that site and community.

Comments

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 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 convert 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:

- The nonprofit must have a determination letter from the Internal Revenue Service affirming its tax-exempt status, and cannot be a private foundation.
- The nonprofit must be based in California, and all of the nonprofit's board members must have their primary residence in California.
- 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. Sometimes, these restrictions deter developers from pursuing for-sale DBL projects altogether.

This bill amends 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 low-income families who participate in a below market interest rate loan program, rather than allowing 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.

This bill maintains the provisions of AB 323 (Holden) to limit the eligibility of who may purchase an income-restricted unit under DBL, as well as requiring the occupants of the units to be ELI, VLI, or LI households, and for the units to be preserved for lower income housing for at least 45 years. Additionally, equity sharing agreements must include a provision for a homeowner to recover their investments for maintenance or improvements, which seeks to ensure that the owner receives a minimum of 20% of the property value increase during the term of the ownership. Given nonprofit partners are required to maintain the affordability levels for 45 years, removing the 180-day restriction will enable more of these homes to be covered by these partnerships and greater assurances these units will maintain their affordability levels.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/20/26)

Habitat for Humanity California (Source)
Abundant Housing Los Angeles
Bay Area Council
Cal Chamber
California Council for Affordable Housing
California Yimby
Cbia
Housing Action Coalition
Monterey Bay Economic Partnership
Spur
Student Homes Coalition

OPPOSITION: (Verified 8/20/26)

California Association of Realtors

ARGUMENTS IN SUPPORT: According to the author, “AB 939 addresses the consequence of density bonus law that delays the sale of lower-income designated ownership units and leaves affordable homes vacant for extended periods of time. Current law prohibits nonprofit affordable housing organizations from acquiring unsold affordable ownership units until 180 days after issuance of a certificate of occupancy. This delay creates costs while preventing families from accessing affordable homeownership opportunities. Nonprofit affordable housing organizations work directly with income-qualified homebuyers with approved financing to purchase homes. At any given time, there are ten to one-hundred times the number of income qualified buyers than homes available. Unlike traditional market sales, nonprofit affordable homeownership models ensure homes are sold at affordable below-market prices, sales commission free and attainable to low- income families while preserving long-term affordability resale restrictions to keep the affordable housing stock affordable for future first-time homebuyers. These organizations don’t assess sales commissions; instead they provide stewardship, buyer education, and ongoing compliance oversight that protects homebuyers and the public investment in affordable housing. AB 939 streamlines the transfer of affordable ownership units to qualified nonprofit partners, reducing prolonged vacancies and ensuring these homes are occupied quickly by low-income owner-occupants consistent with the public purpose of California’s density bonus law.”

ARGUMENTS IN OPPOSITION: Writing in opposition unless amended, the California Association of Realtors assert “AB 939 locks families into restrictive repurchase contracts that intercept future equity, trapping low-income buyers in a cycle of permanent asset limitation and disproportionately harming communities already facing homeownership barriers. Unless amended to resolve C.A.R.’s concerns, AB 939 will undermine property rights, weaken homeownership pathways, and threaten the long-term stability of California’s entry-level ownership market.”

ASSEMBLY FLOOR: 60-9, 1/29/26

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Carrillo, Castillo, Chen, Connolly, Davies, Dixon, Elhawary, Flora, Fong, Gabriel, Garcia, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NOES: Ávila Farías, DeMaio, Ellis, Gallagher, Hoover, Macedo, Ramos, Sanchez, Tangipa

NO VOTE RECORDED: Arambula, Caloza, Gipson, Jeff Gonzalez, Hadwick, Johnson, Lackey, Muratsuchi, Ransom, Celeste Rodriguez, Valencia

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