
SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair

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Author: Arreguín
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Consultant: Favorini-Csorba

***HOUSING DEVELOPMENT: DENSITY BONUS: INCENTIVES OR CONCESSIONS:
LABOR STANDARDS***

Prohibits a density bonus concession or incentive from being used to modify labor standards.

Background

The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Cities and counties use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations. Zoning ordinances and other development decisions must be consistent with the city or county’s general plan.

Density bonus law. The state’s density bonus law grants certain benefits to developers who build affordable units in order to encourage greater affordable housing production. Density bonus law requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least one of the following:

- 10% of the total units of a housing development for lower income households;
- 5% of the total units of a housing development for very low-income households;
- A senior citizen housing development or mobile home park;
- 10% of the units in a common interest development for moderate-income households;
- 10% of the total units for transitional foster youth, disabled veterans, or homeless persons; or
- 20% of the total units for lower income students in a student housing development.

If a project meets one of these conditions, the city or county must allow an increase in density on a sliding scale from 20% to 50% over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan, depending on the percentage of affordable units.

Incentives, concessions, waivers, and other benefits. Density bonus law also grants “incentives or concessions” that can be used to modify development policies that add costs or reduce the number of units that a developer can build on a site. Incentives and concessions can vary widely based on the individual projects, but examples can include waivers of zoning codes, reduced parking requirements, approval for mixed-use zoning, or other reductions of other regulatory requirements on development. The number of incentives or concessions a project may be eligible for is based on the percentage of affordable units contained in the project and other project characteristics, up to a maximum of five.

Density bonus law also allows “waivers” of any development standards that physically prevent the developer from constructing a project at the density allowed to the project, along with the incentives or concessions, under density bonus law. Finally, density bonus law reduces or eliminates the parking that can be required in connection with a project.

Cities and counties must grant the requested incentives, concessions, or waivers except under very limited circumstances:

- If the waiver, incentive, or concession will have a specific, adverse impact upon public health and safety or on any property that is listed in the California Register of Historical Resources that cannot be mitigated;
- If the waiver, incentive, or concession would violate state or federal law; or
- If the city or county finds the concession or incentive does not result in identifiable and actual cost reductions to provide for affordable rents or housing costs.

Recent court cases have expanded density bonus law on the basis that, “if the project were not built, it goes without saying that housing units for lower income households would not be built and the purpose of the density bonus law to encourage such development would not be achieved.”¹ This interpretation means that “a city [or county] may not apply any development standard that would physically preclude construction of that project as designed,”² if the project includes the required number of affordable units. Another court case established a presumption that the requested concessions or incentives will result in a cost reduction that enables construction of affordable units.³ This means that a city or county that wants to deny a concession or incentive must bear the burden of proof that it doesn’t.

Local labor standards. In 2023, the City of Berkeley adopted the “Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards” (HARD HATS) ordinance, intended to improve the recruitment, training, and retention of skilled construction workers. Specifically, the ordinance requires contractors working on certain housing and commercial developments to participate in apprenticeship programs and provide health care coverage to workers. The ordinance took effect on January 1, 2024, and was the first ordinance of its kind in California. The City also required contractors to pay prevailing wages to construction workers on projects in the City’s Southside neighborhood as part of a broader effort to rebalance zoning restrictions in that area. Subsequently, multiple developers of projects in Berkeley have requested to use a concession under state DBL to exempt their projects from the City’s labor requirements. The City’s planning commission approved those concessions and the

¹ *Wollmer v. City of Berkeley* (2011) 193 Cal. App. 4th 1329.

² *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal. App. 5th 755.

³ *Schreiber v. City of Los Angeles* (2021), 69 Cal. App. 5th 549

City Council declined to overturn the approval, despite reservations, over fear that state law did not allow them to deny such a concession.

Labor organizations want the Legislature to preclude the use of density bonus law to reduce labor standards.

Proposed Law

Senate Bill 1383 prohibits a concession or incentive from being used to modify any legal requirements regarding wages paid, hours worked, and other conditions of employment.

Comments

1. Purpose of the bill. According to the author, “SB 1383 addresses a critical gap in California’s Density Bonus Law that has allowed its intended purpose to be misapplied. While the law was designed to incentivize affordable housing production, a recent case where labor standards were waived using the state’s density bonus law has set a bad precedent and has broad impacts for worker safety. Labor standards are essential to ensuring Californians have good paying jobs that can provide a roof over their head and put food on the table for their families, while at the same time ensuring construction quality for much-needed housing in California. By allowing labor standards to be waived, this could threaten worker safety, undermine training pipelines, and create unfair competition by allowing bad actors to undercut responsible contractors. SB 1383 ensures that increasing housing supply does not come at the expense of worker protections, a good paying job, or construction quality.”

2. By design. Legislators—aided by the courts—have steadily expanded the extent to which developers can use density bonus law to build projects how they see fit, with the goal of enabling the construction of affordable housing. State law doesn’t spell out what concessions or incentives a developer can ask for: so long as a regulatory requirement reduces costs to support affordable housing, they can request it, and there are extraordinarily limited circumstances under which the local agency can deny it. SB 1383 stops developers from requesting one particular kind of concession or incentive—those related to labor standards. If a developer can’t avoid labor standards with a concession or incentive, they’ll have to request a different concession or incentive that they believe might be less valuable to the project. To the extent that a project needs the most lucrative concession or incentive to be financially feasible, SB 1383 might reduce the number of affordable units built in the state.

3. Penny-wise, pound foolish. In requesting concessions to reduce labor standards, project developers in Berkeley cited the cost of those standards. Whether labor standards truly affect project costs is subject to significant debate. One high-profile study compared costs for developing permanent supportive housing in Los Angeles with and without using funding from Measure HHH, a local bond measure approved by voters in 2016.⁴ Projects over 65 units that receive funding from Measure HHH must include a project labor agreement (PLA), which is a collective bargaining agreement between a project developer and a union. The study found that costs for HHH projects over 65 units were 21% higher than permanent supportive housing projects that did not receive funding from HHH. However, other studies find no effect, or even reduced costs and faster completion times for projects with PLAs because union labor was more

⁴ Jason Ward, *RAND*. “Revisiting the Effects of the Proposition HHH Project Labor Agreement Using Cost Data from Completed Projects.” (2024)

productive and PLAs reduced the delays and costs associated with skilled labor shortages.⁵⁶ An analysis strictly based on project cost also misses some benefits of labor standards, which can include higher wages and greater benefits for workers. Nearly half of construction workers in California have enrolled in at least one safety net program, costing the state over \$3 billion annually.⁷ Since SB 1383 limits the ability of developers to waive labor standards, it may reduce reliance on these programs, saving taxpayer dollars.

4. But wait, there's more! Density bonus law is not the only state law that allows developers to waive requirements that cities and counties impose on projects. The builder's remedy, as codified by AB 1893 (Wicks, 2024), prohibits cities and counties that do not have a compliant housing element from imposing standards that render a project infeasible or prevent construction of the project as proposed by the applicant. SB 1383 closes a loophole in state law that allows developers to avoid labor standards through the use of a concession or incentive, but leaves open the possibility that projects may use the builder's remedy to the same end.

5. Incoming! The Senate Rules Committee has ordered a double-referral of SB 1383: first to the Committee on Housing, which approved the bill at its April 15th hearing on a vote of 8-1, and second to the Committee on Local Government.

Support and Opposition (4/24/2026)

Support: State Building & Construction Trades Council of California (Co-Sponsor)
 Western States Council Sheet Metal, Air, Rail and Transportation (Co-Sponsor)
 California Federation of Labor Unions, Afl-cio
 California Safety and Legislative Board, Smart – Transportation Division (smart – Td)
 California State Association of Electrical Workers
 California State Pipe Trades Council
 Construction Trades Workforce Initiative (CTWI)
 Rising Sun Center for Opportunity

Opposition: None Submitted

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⁵ Michael McFadden, Sai Santosh, and Ronit Shetty, *Independent Project Analysis*. “Quantifying the Value of Union Labor in Construction Projects.” (2022)

⁶ Larissa Petrucci, Matthew Hinkel, and Grace Dunn, *Cornell School of Industrial and Labor Relations*. “Timely Construction: The Effect of Project Labor Agreements on Time to Completion for Public Works Construction in Sacramento County, California.”

⁷ Ken Jacobs and Kuochih Huang, *UC Berkeley Center for Labor Research and Education*. “The Public Cost of Low-Wage Jobs in California’s Construction Industry.” (2021)