

SENATE THIRD READING
SB 92 (Blakespear)
As Amended July 7, 2025
Majority vote

SUMMARY

Limits the ability of development proponents to apply concessions, incentives, and development waivers under Density Bonus Law (DBL) to nonresidential uses, including hotel uses, as specified.

Major Provisions

- 1) Specifies that a concession or incentive granted under DBL shall not result in a proposed project with a commercial floor area ratio (FAR) that is more than 2.5 times the premises' current allowed base zone commercial FAR.
- 2) Provides that 1), above, does not apply to proposed projects that have submitted a preliminary application or an entitlement application prior to January 1, 2026.
- 3) Provides that DBL does not require a local government to approve, grant a concession or incentive requiring approval of, or waive or reduce development standards for a hotel, motel, bed and breakfast inn, or other transient lodging, other than a residential hotel, component of a mixed-use housing development project.

COMMENTS

Density Bonus Law: California's DBL, originally enacted in 1979, is a key state policy tool aimed at addressing the financial challenges of building affordable housing, particularly in high-cost markets.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 struggles to deliver housing that is affordable to low- and moderate-income households without public subsidy. An analysis by the California Housing Partnership compares the cost of market rate developments with the median cost of developing affordable rental homes. In the four regions analyzed, the study found that the cost of developing one unit of affordable housing ranged from approximately \$480,000 to \$713,000, while the cost of developing one unit of market rate housing in the state ranged from approximately \$508,000 to \$637,000.¹ The increased cost for the deed-restricted affordable units can be attributed, in part, to the difficulty associated with assembling a capital stack for affordable housing development, the complex regulations that these affordable units must comply with, and the added cost of labor requirements tied to certain public funding sources used by affordable housing developers.

DBL seeks to close some of the financial gaps associated with building affordable housing by allowing developers to build more units than local zoning laws typically permit, known as a "density bonus," in exchange for reserving a certain percentage of the housing units as affordable. This increased density enables the fixed costs of development to be spread across

¹ Mark Stivers, *Affordable Housing Compares Favorably to Market-Rate Housing From a Cost Perspective*, California Housing Partnership, January 2024: <https://chpc.net/affordable-housing-compares-favorably-to-market-rate-housing-from-a-cost-perspective/#:~:text=It%20turns%20out%20that%20costs,market%20rate%20developments%20do%20not.>

more units, thereby helping to offset the lower returns from the affordable units and reducing the need for direct public subsidy. Under current law, any housing development proposing five or more units, including mixed-income developments, can take advantage of the provisions of DBL.

To qualify for a density bonus, a project must include one of several affordability options, including providing units for lower-income, very low-income, or moderate-income households, or targeting specific populations such as seniors, transition-age foster youth, disabled veterans, or lower-income college students. All affordable units built under DBL must be deed-restricted for at least 55 years to ensure long-term affordability. Local governments are required to adopt a local ordinance implementing DBL. However, even if a local government has not formally adopted a density bonus ordinance, it is still legally obligated to comply with state law and grant the bonuses and concessions to qualifying projects as requested by developers.

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 for additional market-rate units starting at 20%, with the potential to increase up to 50%, depending on the proportion of affordable units provided. Fully affordable projects can qualify for up to an 80% density bonus, or unlimited density if located within ½ mile of a major transit stop, or in a very low vehicle travel area.

In addition to the density bonus, eligible projects are entitled to receive between one and five regulatory incentives or concessions, depending on the share of affordable housing units provided. These may include modifications to development standards such as reduced setbacks, increased building height, higher floor area ratios (FAR), or reduced parking requirements, when those changes result in actual and identifiable cost savings that help support the affordable units. Because DBL applies to mixed-use developments, a project may also receive incentives or concessions for increased intensity or expanded nonresidential uses if doing so would reduce the overall cost of development. Projects can also request other zoning or regulatory modifications that reduce development costs, and local governments must grant those incentives, unless they can make specific findings to deny them as narrowly defined in state law. Developers maintain that these incentives and concessions are critical for making affordable housing projects financially feasible.

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.

Tower at the Beach: In recent years, as DBL has been expanded to increase its efficacy and the amount of bonuses, incentives, and concessions, it has come under increased scrutiny regarding its intersection with local planning regulations. In San Diego, a proposed 22-story project at 970 Turquoise Street serves as an interesting case study on the intersection of state and local laws. The project developer is taking advantage of the project vesting provisions established under SB 330 (Skinner), Chapter 654, Statutes of 2019, in combination with DBL, a local San Diego density bonus program, and a unique-to-San Diego hotel provision to propose a 239' tall building where ordinarily a 30' height limit would apply. The site's 30' height limit was established by a

1972 voter initiative, Proposition D, which created San Diego's Coastal Height Limit Overlay Zone (not to be confused with California's Coastal Zone).

The site is locally zoned CC-4-2, which permits high-density commercial uses and limited residential development. Under this zoning, only 31 residential units would typically be allowed on the 0.67-acre site. However, by designating 15% of those base units (five units) for very-low-income households, the developer qualifies for a 50% density bonus under DBL, allowing for 16 additional market-rate units. A second 50% bonus, enabled by AB 1287 (Alvarez), Chapter 775, Statutes of 2023, which went into effect on January 1, 2024, was granted for the inclusion of another five units for moderate-income households. This added 16 more market-rate units. In total, DBL increased the project's residential count by 32 units, in exchange for 10 affordable units, raising the unit count from 31 to 63 units. Additionally, the project leverages local incentives under San Diego's municipal code to access 11 more residential units, through a local density bonus, because the proposal includes three-bedroom units. This brings the total number of residential units to 74.

The remaining 139 "units" included in the proposed development at 970 Turquoise Street are hotel rooms, classified as "visitor accommodations," which are allowed by-right under San Diego's commercial zoning for the site. The developer requested an incentive to the Floor Area Ratio (FAR) requirements of the City's municipal code to increase the project size and financial feasibility, and applied the entirety of that FAR incentive to the "commercial" component of the site (the hotel rooms). This is how the nearly 240' development in a zone with a 30' height limit came to be.

Notably, these hotel units are not intended for short-term tourist stays. Under the version of San Diego's local municipal code in effect at the time the developer submitted its preliminary application, visitor accommodations could legally be rented for more than 30 days, essentially allowing them to be used as housing units. The developer intends to use this provision to operate the hotel rooms, which will include kitchens, as long-term market-rate rental housing. Although San Diego has since updated its development code to prohibit the long-term rental of visitor accommodations, the project is vested under the prior rules under SB 330. As such, the new restrictions on using hotel rooms for long-term rentals do not apply to 970 Turquoise.

In total, the combination of DBL, San Diego's local bonus program, and San Diego's unique provision which previously allowed for the long-term rental of hotel units, resulted in this "213 residential unit" proposal that was not contemplated under San Diego's local planning regulations, in exchange for 10 affordable units under DBL. DBL directly unlocked an extra 32 market-rate units in exchange for the 10 affordable units. San Diego's own bonus program provided an extra 11 units. Finally, the provisions of San Diego's municipal code that allowed hotel units to function as apartment units unlocked an extra 139 "units" once the FAR incentive provided under DBL was applied to the hotel use.

Reining in DBL: In direct response to the aforementioned development proposal at 970 Turquoise Street in San Diego, two bills were introduced this legislative session by San Diego members in order to limit the applicability of DBL. This bill is one of those. This bill would amend DBL so that local governments are not required to approve incentives, concessions, or waivers for hotel, motel, bed and breakfast inn, or other transient lodging components, in mixed-use projects using DBL. It further provides that a concession or incentive shall not result in a proposed project with a commercial floor area ratio that is greater than two and a half times the

premises' current allowed base zone commercial floor area ratio. The limits on commercial FAR expansion would only apply to projects that submit a preliminary application or entitlement application on or after January 1, 2026.

In doing so, this bill seeks to strike a balance between maintaining flexibility for the developer and ensuring that developments like the Turquoise Street project do not use DBL to drastically increase the scale of the commercial component of a mixed-use development without that benefit having a clear nexus to offsetting the cost of affordable housing development. DBL has been heavily amended in recent legislative history, and this bill proposes a modest reassessment of the law to maintain its stated purpose of providing additional density, incentives, and concessions to offset the cost of increased affordable housing development. The Turquoise Street development faced robust local opposition, which could have led to more drastic legislative proposals to undermine the efficacy of DBL. This relatively balanced proposal could help to safeguard DBL as a valuable tool for affordable housing development, without negative externalities at the local level.

According to the Author

"California's density bonus law is one of our strongest tools for expanding housing options for all Californians, but it only works if it's used in good faith. Legislators carefully constructed the law to require a fair exchange of housing for powerful overrides of zoning standards set by local communities. The 970 Turquoise Street project proposal illustrates a loophole in the law that upsets this balance. In exchange for only 10 affordable housing units, the project developer requested zoning incentives under density bonus law that would allow the project to increase the commercial floor area of the project by 1,600 percent, resulting in a 20-story, 139-room luxury hotel. As the Department of Housing and Community Development wrote, this project's application of the law, "Would not further the fundamental purpose of the law." SB 92 will close this loophole by realigning the scope of density bonus zoning incentives with the intent of the law: promoting housing production. This is critical to preserve the public's trust in our housing laws and to make housing affordable for all Californians."

Arguments in Support

The City of San Diego, the bill sponsor, writes in support: "I am writing to confirm our sponsorship of, and strong support for, Senate Bill 92 (SB 92), which is intended to address the misuse of Density Bonus Law, which was originally enacted to incentivize the development of affordable housing. Currently, the law lacks provisions that regulate the proportion of commercial to residential square footage in a project, which has allowed developers to exploit this gap by proposing non-residential hotel units while still claiming substantial housing incentives. SB 92 effectively closes this loophole and ensures the law is used as intended—to support the construction of residential housing."

Arguments in Opposition

None on file for current bill version.

FISCAL COMMENTS

None.

VOTES

SENATE FLOOR: 31-3-6

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

NO: Alvarado-Gil, Ochoa Bogh, Strickland

ABS, ABST OR NV: Choi, Dahle, Grove, Jones, Reyes, Valladares

ASM HOUSING AND COMMUNITY DEVELOPMENT: 12-0-0

YES: Haney, Patterson, Ávila Farías, Ward, Garcia, Kalra, Lee, Quirk-Silva, Ta, Tangipa, Wicks, Wilson

ASM LOCAL GOVERNMENT: 10-0-0

YES: Carrillo, Ta, Hoover, Pacheco, Ramos, Ransom, Blanca Rubio, Stefani, Ward, Wilson

UPDATED

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