SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2017 - 2018 Regular

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Author:	Wiener		
Version:	4/10/2018 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alison Hughes		

SUBJECT: Planning and zoning: transit-rich housing bonus

DIGEST: This bill requires a local jurisdiction, notwithstanding any local ordinance, general plan element, specific plan, charter, or other local law, to provide an eligible applicant with a transit-rich housing bonus if requested by the developer, as specified.

ANALYSIS:

Existing law:

1) Requires all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.

2) 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:

   a) 10% of the total units of a housing development for lower income households
   b) 5% of the total units of a housing development for very low-income households
   c) A senior citizen housing development or mobile home park
   d) 10% of the units in a common interest development (CID) for moderate-income households
   e) 10% of the total units for transitional foster youth, disabled veterans, or homeless persons.

3) Requires the city or county to allow an increase in density of 20% over the otherwise maximum allowable residential density under the applicable zoning

ordinance and land use element of the general plan for low-income, very low-income, or senior housing, and by 5% for moderate-income housing in a CID.

This bill, notwithstanding any local ordinance, general plan element, specific plan, charter, or other local law, requires a local jurisdiction to provide an eligible applicant with a transit-rich housing bonus if requested by the developer. Specifically, this bill:

1) Makes the following definitions:
   a) "High-quality bus corridor" means a corridor with fixed route bus service that meets all of the following criteria:
      i) Average service of no more than 15 minutes during the three peak hours between 6 am – 10 am, inclusive, and the three peak hours between 3 pm – 7 pm, inclusive, on Monday through Friday;
      ii) Average service intervals of no more than 20 minutes during the hours of 6 am – 10 am, inclusive, on Monday through Friday.[1]
      iii) Average intervals of no more than 30 minutes during the hours of 8 am – 10 pm, inclusive, on Saturday and Sunday.
   b) "Major transit stop" means a site containing an existing rail transit station or a ferry terminal served by either bus or rail transit.
   c) "Transit-rich housing project" means a residential development project within a one-half mile radius of a major transit stop or a one-quarter mile radius of a stop on a high-quality bus corridor.

2) Requires a project from an eligible applicant — a development proponent who receives a transit-rich density bonus — to be exempt from all of the following:
   a) Maximum controls on residential density.
   b) Maximum controls on floor-area-ratio (FAR)[2] lower than those specified below.
   c) Minimum parking requirements, unless the project is outside of a one-quarter mile of a major transit stop, in which case the local jurisdiction may enforce a parking minimum of up to .5 parking spots per unit.
   d) Maximum building height limits that are less than those specified below, unless the height proposed by the development proponent would have a specific, adverse impact upon public health or safety, and there is no feasible

[1] There was an error in the recent amendments. The bus service should be 6 am – 10 pm, inclusive, Monday through Friday.
[2] Floor-Area-Ratio refers to the ratio of a building's total floor area to the size of the piece of land upon which it is built.

method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development infeasible:

i) If the transit-rich housing project is within one-quarter mile radius of a major transit stop, the maximum height limitation shall not be less than 55 feet.
ii) If the transit rich housing project is within one-half mile radius of a major transit stop, but does not meet the requirements in (i) above, any maximum height limitation shall not be less than 45 feet.
iii) The applicant shall comply with any maximum height limitation for a transit-rich housing project that is greater than 45 or 55 feet.

3) Allows a development proponent to submit an application for a development to be subject to the transit-rich housing bonus if the application at the time of submittal, among other things, meets the following planning standards:

a) A demolition permit is subject to all demolition permit controls, restrictions, and review processes enacted by the applicable local government. The applicant shall be ineligible for a transit-rich housing bonus in the following circumstances:

i) A residential development is proposed on any property in which existing rental units that are subject to any form of rent or price control would need to be demolished, unless expressly authorized by the local government, and
ii) The residential development is proposed on property in which a property owner has withdrawn their property from rent or lease within five years before an application for a transit rich housing bonus is submitted.

b) The development complies with any local inclusionary housing ordinance. Inclusionary ordinance includes the following:

i) A mandatory requirement, as a condition of the development of residential units, that the development contain a specified number of units affordable to lower income families, or alternative means to increase affordability.
ii) If a local government does not have a mandatory requirement as described in (i), but has a local voluntary incentive-based program that grants a range of incentives to developments that include an objective and knowable amount of onsite affordable housing.

c) If a local government has not adopted an inclusionary ordinance and the development project has greater than 10 or more units, the development agrees to provide the applicable percentage of units awarded as onsite affordable housing as indicated below. "Units awarded" means the increase in units in the residential development permitted above the maximum allowable residential density after the transit rich housing project is granted. "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan of the applicable local government. If a range of density is permitted, the maximum allowable density for the specific zoning range and land use element of the general plan is applicable to the project.

i) For projects with 10-25 residential units, the development proponent shall choose between the following:
   A) Offer 5% for very low-income households;
   B) Offer 10% for low-income households; or
   C) Offer 25% for moderate-income households.

ii) For projects with 26-50 residential units, the development shall choose between the following:
   D) Offer 7% for very low-income households;
   E) Offer 13% of the units for low-income households; or
   F) Offer 30% of the units for moderate-income households.

iii) For projects with 51 or more residential units with fewer than one-quarter of the square footage dedicated to office use, the development proponent shall choose between the following:
   G) Offer 11% of the units for very low-income households;
   H) Offer 20% of the units for low-income households; or
   I) Offer 40% of the units for moderate-income households.

iv) For projects with 51 or more residential units with more than one-quarter of square footage dedicated to office use, the development proponent shall offer 20% of the units for lower-income households, including 10% for very low-income households.

d) The development proponent prepares and submits relocation assistance and benefits plan (plan) as described below.

e) The development complies with all local objective zoning design standards that were in effect at the time the applicant submits its first application to the local government, provided that those design standards shall not result in a FAR for the development that received the bonus that is less than the following:

i) 2.5 FAR for lots with a maximum height limit of 45 feet

ii) 3.25 FAR for lots with a maximum height limit of 55 feet

f) Agrees to replace units that are affordable to lower- or very low-income households if the development includes a parcel on which rental units are located, or if the units have been vacated or demolished in the five-year period preceding the application, are subject to a requirement that restricts rents to levels affordable to persons of lower or very-low income or rent or price control. "Replace" means either of the following:

i) If the units are occupied, all eligible displaced persons shall be provided with a right to remain guarantee. For unoccupied units in a development with occupied units, the developer shall provide units of equivalent size or type or both to be made available at affordable rents or affordable housing cost to, and occupied by persons and families in the same or lower income category.

ii) If the units have been vacated or demolished within a five year period before the application for the transit-rich housing bonus, the development shall provide at least the same number of units in the five-year equivalent size or type, or both, as existed at the highpoint of those units in the five year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by persons and families of the same or lower income category.

4) Provides that an eligible applicant who receives a transit rich housing bonus may also apply for a density bonus, incentive or concession, or waiver or reduction under existing law.

5) Requires an eligible application to provide each resident in the development with a transit pass.

6) Provides that, in the event a transit-rich housing project is issued a demolition permit by a local government, the project shall comply with any state or local tenant relocation benefit and assistance program or ordinance serving residential tenants in the demolished units. If the demolition permit results in direct displacement of tenants, the local government may not issue demolition permits for rental housing units as a part of the application for a transit-rich housing project, unless the developer complies with relocation benefits and assistance and a right to remain guarantee, as follows:

a) The development proponent prepares and submits a plan to the jurisdiction.

b) The development proponent offers all eligible displaced persons a right to remain guarantee that is a right of first refusal for a comparable unit in the transit-rich housing project after it finishes construction and a new lease for that unit at a rate not to exceed the base rent, as specified.

7) Requires an eligible applicant that receives a transit-rich housing bonus to comply with the procedures and requirements in this section in providing relocation benefits and a right to remain guarantee to any eligible displaced person.

a) "Eligible displaced person" means any person who occupies property in the development who will become displaced, or any person who moves from the property located within the boundaries of the development after an application for a transit-rich housing bonus is complete.
b) An eligible applicant shall inform all eligible displaced persons regarding the projected date of displacement and, periodically, shall inform those persons of any changes in the projected date of displacement.

8) Requires a development proponent to provide notice of the plan to all eligible displaced persons at least 30 days before submitting the plan to the local government for approval. A developer shall prepare a detailed plan and submit that plan to the applicable local government for approval to determine whether the plan complies with the requirements of this bill. The plan shall include all of the following:

a) Projected dates of displacement, an analysis of the aggregate relocation needs of all eligible displaced persons, and a detailed explanation as to how these needs are to be met.
b) A written analysis of relocation housing resources, including vacancy rates of the neighborhood and surrounding areas.
c) A detailed description of relocation payments and a plan for disbursement.
d) A standard information statement to be sent to all eligible displaced persons who will be permanently displaced.
e) Plans for public review and comment on the development project and relocation benefits and assistance plan.

9) Requires a developer to provide notice of the plan to all eligible displaced persons at least 30 days before submitting the plan to the local government for approval.

10) Requires the eligible applicant after the applicable local government approves the plan, to do all the following:

a) Notify all eligible displaced persons of the availability of relocation benefits and assistance, the eligibility requirements of relocation benefits and assistance, and the procedures for obtaining relocation benefits and assistance.
b) Determine the extent of the need of each eligible displaced person for relocation benefits and assistance.
c) Provide the current and continuing information on the availability, prices, and rentals of comparable sales and rental housing.
d) Assist each eligible displaced person to complete applications for payments and benefits and move to a comparable replacement dwelling.
e) Supply to each eligible displaced person information concerning federal and state housing programs.
f) Inform all persons who are expected to be displaced about the eviction policies to be pursued in carrying out the project, which shall be in accordance with the plan.

11) Requires an eligible applicant that receives a transit-rich housing bonus to make relocation payments to, or on behalf of, eligible displaced persons for all actual reasonable expenses incurred for moving and related expenses to move themselves, their family, and their personal property, and for relocation benefits.

12) Requires an eligible applicant, in making payments under this section, to comply with all of the following:

a) "Moving and related expenses" includes all of the following: transportation of persons and property; storage of personal property up to 12 months; and the reasonable replacement value of property lost, stolen, or damaged in the process of moving, as specified.
b) An eligible displaced person who elects to self-move may submit a claim for their moving and related expenses to the eligible applicant in an amount not to exceed an acceptable low bid or an amount acceptable to the displacing entity. An eligible displaced person is not required to provide documentation of moving expenses actually incurred.
c) "Relocation benefits" means a payment of an amount necessary to enable that person to lease or rent a replacement dwelling for a period not to exceed 42 months, as specified.

13) Provides that if, on or after January 1, 2018, a local government adopts an ordinance that eliminates residential zoning designations or decreases residential zoning development capacity within an existing zoning district in which the development is located below what was authorized on January 1,

2018, then that development shall be deemed to be consistent with any applicable requirement of this bill if it complies with zoning designations that were authorized as of January 1, 2018.

14) Authorizes the Department of Housing and Community Development (HCD) to, at any time, review any new or revised zoning or design standards after the operative date of the bill to determine if those local standards are consistent with the requirements of this bill. If HCD determines that those standards are inconsistent, HCD shall issue a finding of inconsistency and those standards shall be rendered invalid and unenforceable as of the date that finding is issued.

15) Requires the provisions in this bill to become operative on January 1, 2021. A local government may apply to HCD, no later than July 1, 2020, for a one-year, one-time extension. The application shall be reviewed and granted if the city meets specified requirements.

COMMENTS

1) *Purpose.* According to the author, California is in a deep housing crisis, with a housing deficit approaching four million homes. This housing shortage threatens our state's environment, economy, diversity, and quality of life, and we need an enormous amount of new housing at all income levels. Our housing shortage leads to displacement and gentrification and makes evictions more common. The status quo isn't working, and we need to do things differently. As we add new housing, it should be near public transportation and not simply sprawling out, covering up farmland, and leading to crushing commutes. Yet too many communities effectively prohibit more than a handful of people from living near transit, by zoning for low density even around major transit hubs. Small and medium-sized apartment buildings (i.e., not single-family homes and not high rises) near public transportation are an equitable, sustainable, and promising source of new housing. This bill promotes this kind of housing by setting standards for density near transit—allowing small apartment buildings that are often now banned—within a half mile of a major transit station or a quarter mile of a bus stop on a frequent bus line. Around rail stations and ferry terminals, the bill also relaxes maximum height limits up to 45 or 55 feet—that is, a maximum of four and five stories—depending on the distance from transit. This bill contains some of the strongest anti-displacement rules in state law, including an affordability requirement, demolition restrictions on rent-controlled housing and any property with an Ellis Act eviction, and tenant protections to avoid displacement.

2) *California's Affordable Housing Crisis.* California is currently experiencing a housing crisis. According to HCD, California needs to produce, on average, 180,000 units per year to keep up with population growth. Unfortunately, the state has under-produced since the 1980's. Even in the 2000's when there was more production, California never hit the 180,000 mark. HCD also points out that lower-income families are disproportionately impacted by the lack of affordable housing. While needs vary by region, according to the *California's Housing Future: Challenges and Opportunities* report, California statewide has a surplus of above moderate/market rate housing (about 300,000) and a shortfall of about 3.5 million units for all lower-income households.

3) *Housing near Transit.* Research has shown that encouraging more dense housing near transit serves not only as a means of increasing ridership of public transportation to reduce greenhouse gases (GHGs), but also a solution to our state's housing crisis. As part of California's overall strategy to combat climate change, the Legislature began the process of encouraging more transit oriented development with the passage of SB 375 (Steinberg, Chapter 728, Statutes of 2008). SB 375 is aimed at reducing the amount that people drive and associated GHGs by requiring the coordination of transportation, housing, and land use planning. The Legislature subsequently allocated 20% of the ongoing Cap and Trade Program funds to the Affordable Housing and Sustainable Communities Program, which funds land use, housing, transportation, and land preservation projects to support infill and compact development that reduce GHGs. At least half of the funds must support affordable housing projects.

   A 2016 report by the McKinsey Global institute, entitled *A Tool Kit to Close California's Housing Gap: 3.5 million Homes by 2025*, found that increasing housing demand around high-frequency public transit stations could build 1.2 – 3 million units within a half-mile radius of transit. The report notes that this new development would have to be sensitive to the character of a place, and recommends that local communities proactively rezone station areas for higher residential density to pave the way for private investments, accelerate land-use approvals, and use tax increment bonds to finance station area infrastructure.

   Research has also demonstrated the positive relationship between income and vehicle miles traveled (VMT). A study by the Center for Neighborhood Technology, entitled *Income, Location Efficiency, and VMT: Affordable housing as a Climate Strategy*, created a model to isolate the relationship of income on VMT. This model found that lower-income families living near transit were likely to drive less than their wealthier neighbors. More specifically, in Metro Regions, home to two-thirds of California's population, identically-composed and located low-income households were predicted to

drive 10% less than the median, very low-income households 25% less, and extremely low-income households 33% less. By contrast, middle income households were predicted to drive 5% more and above moderate-income households 14% more. The patterns are similar for the other two Regional Contexts, although the differences are slightly reduced in Rural Areas. This research demonstrates the value of encouraging lower-income people near transit who are more likely to increase transit ridership.

4) *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. Density bonus law 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 density bonus law 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 density bonus law, a proposed housing development must contain a minimum percentage of affordable housing (see (2) in the "Existing Law" section). If one of these five 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 density bonus law, a market rate developer gets density increases on a sliding scale based 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, 20% density for 10% low-income units, and 5% density for 10% moderate-income unis in a CID. The maximum additional density permitted is 35% (in exchange for 11% very low-income units, 20% low-income units, and 40% moderate-income units in CIDs). The developer also negotiates additional incentives and concessions, 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.

5) *Transit-rich housing bonus.* This bill creates an incentive for housing developers to build near transit by exempting developments from certain low-density requirements, including maximum controls on residential density, maximum controls on FAR, as specified, minimum parking requirements, as specified, and maximum building height limits, as specified. A developer may choose to use the benefits provided in this bill if it meets certain requirements.

6) *Capturing the Public Benefit.* Exemptions from certain low-density zoning standards such as those proposed in this bill will greatly increase land values as upzoning confers a monetary benefit to property owners and developers. Given the potential windfall for developers, one method of providing a public benefit while capturing or off-setting the increased land value is to require the inclusion of a certain level of affordable housing. This is a similar scheme to density bonus law, in which the developer receives increased density in exchange for the inclusion of affordable housing. The bill attempts to do so by permitting local jurisdictions with an inclusionary requirement to apply that ordinance to the project. For jurisdictions without an ordinance, this bill provides the developer with a choice of affordability requirements at different income levels based on the height of the project. (See (3)(c) in the "This Bill" section.) According to the author, this scale was based upon the percentages found in density bonus law. These inclusionary requirements however, unlike density bonus law, only apply to additional units that are allowed by the bill, not the number of units in the base zoning. Furthermore, unlike density bonus law, this bill does not provide certainty for how dense a proposed project may be and may be significantly higher than the maximum 35% allowable density bonus permitted under that law.

7) *Will this really create more affordable housing*? Affordable housing developers are concerned that by increasing the allowable density on land currently zoned for lower-density housing without planning for and ensuring the continued presence of lower-income households at a comparable rate to density bonus law, this bill would both be inconsistent with and undermine that law. In other words, a market rate developer is more likely to utilize this new bonus with less affordability requirements given the density exemptions than existing density bonus law. Further, affordable housing developers are concerned that this bill would actually decrease opportunities for the development of housing affordable to lower-income households. The increased value of land near transit could exacerbate the existing challenges affordable housing developers have in competing for expensive parcels in transit-rich area, making it more

difficult and costly to develop new rent-restricted affordable housing near transit.

Several bills passed by the legislature and signed by the Governor last year included affordability requirements (see the "Related Legislation" section below).

Another way to ensure affordability is to require projects eligible for the transit-rich housing bonus to be subject to a 20% requirement for housing affordable to lower-income families, with at least 10% affordable to very low-income families, or allow a higher local inclusionary ordinance to stand. This would align with the maximum requirements in density bonus law for lower-income families, provides a trade-off for the increased value, and encourage increased transit ridership.

8) *Does this bill provide anti-displacement protections*? Affordable housing, tenant's rights, and equity advocates oppose this bill over concerns that it will increase displacement of low-income communities and communities of color by investors and speculators who are seeking to take advantage of the benefits of the transit-rich density bonus. To address these concerns, the author has included several provisions, including the following: requiring a developer to create a relocation assistance and benefits plan; relocation payments for eligible displaced persons for expenses incurred for moving themselves and their property; a right to return; no demolition requirements for rent controlled units; and a no net loss provision to ensure the replacement of affordable units during demolition. (See (5) – (11) in the "This Bill" section, above). Supporters of this bill, including the sponsor, argue that this bill offers amongst the strongest anti-displacement protections that exist in California state law. They state that the Right to Remain guarantee, coupled with increased production of deed-restricted affordable housing and market-rate housing, will reduce direct and indirect displacement of low-income people.

According to housing and equity advocates, right to return policies, in practice, are ineffective at actually ensuring tenants return because housing construction takes several years; once a family has moved away, it is unlikely they will actually move back. These groups note that as demonstrated with redevelopment programs, specific and enforceable rules are required to avoid gentrifying communities. Additionally, the right to return language proposed in the bill is vague and will prove difficult to enforce. For example, the bill does not limit a new owner's ability to rescreen and deny prior tenants, nor does it provide any guarantee that a displaced tenant's rent in the new development

will remain affordable over time. There are no provisions related to how the plan and relocation payments would be enforced, or by whom.

Density bonus law contains a no net loss provision, which requires the one to one replacement of affordable housing units that are removed during demolition. Given the bold nature of this proposal, which will result in the increased value in the parcels eligible for the transit-rich housing bonus near transit, there is an increased likelihood that market rate developers will seek to demolish existing properties and replace them with denser housing over the incentives in density bonus law. The concern is that this increased demolition will take place in lower-income neighborhoods that are more desirable for redevelopment and thus result in the displacement of lower-income families. As noted in Comment 3, the idea of density bonus law is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy; in other words, a developer must make a calculation of whether it is economical to add affordable housing in exchange for a specified amount of additional density. A concern is that the potential for additional density is far greater than in density bonus law, thus making demolition more economically feasible and more appealing. With the potential for a greater return on a demolished property, a no net loss provision will not be sufficient to prevent displacement of lower-income families.

Another solution to prevent displacement of low-income communities and communities of color most at risk of displacement is to instead include similar requirements to SB 35 (Wiener, Chapter 366, Statutes of 2018), which would prohibit a developer from using the bonus for a development that would require the demolition of rental housing or that is proposed on a site that was occupied by rental housing within the last 10 years.

9) *Providing greater certainty around transit.* This bill creates exemptions for developments from specified low-density zoning standards that are near certain types of transit. Unlike ferry terminals and rail stations, however, bus service is not found in fixed locations and due to varying circumstances is more likely to move around. Most transit agencies adjust their route schedules fairly regularly. The frequency of service on some routes may change every year, while others may change every five to ten years. These changes depend primarily on funding, which in some cases is regular and predictable and in other cases, irregular and unpredictable and dependent on the overall economy. Bus service may also be impacted by local demographics, both socioeconomic and geographical.

Given the potential for unpredictable bus service, which could lead to confusion for both developers seeking to use the benefits of this bill, as well as local governments for planning purposes, one solution is to remove bus service from the bill. The bill could instead require the Office of Planning and Research to conduct a study of the impacts of extending the zoning changes enacted by this bill to apply to areas around bus stops, including segregate bus rapid transit and make recommendations to the Legislature.

10) *Impacts to cities and local planning.* This bill, in an effort to encourage denser housing near transit, would override specific planning decisions typically held by local jurisdictions. Local planning efforts through the general plan and zoning ordinances provide an opportunity to anticipate necessary government services such as water, sewer, utilities, schools, and traffic flow, as well as encourage public engagement.

The impacts of this bill could be significant in some areas of the state. For example, while the bill has been amended recently to apply to specified bus service routes, the *LA Times* reported that the prior version of the bill would apply to 190,000 parcels in neighborhoods zoned for single-family homes in Los Angeles. This amounts to about 50% of the city's single-family homes, according to the Department of City Planning.[3] The San Francisco Planning Department estimated that the prior version of the bill to apply to 96% of the city.[4] This bill allows a developer to choose, among other things, the height and density of a planned project that is eligible using the bonus available under this bill. Planners and localities are concerned that they will not be able to plan for or study the impacts of increased populations and demand for services as new developments are constructed.

To allow jurisdictions time to update their local planning documents and conduct studies as necessary, this bill would not take effect until January 1, 2021 with an option for the locality to extend the delay one additional year upon application to HCD.

Last year, the Legislature passed SB 2 (Atkins, Chapter 364), which will provide roughly $125 million in funds for local jurisdictions to update local planning documents, such as general plans and zoning ordinances. HCD anticipates releasing the first notice of funding availability next spring and awarding funds later in the year. Given that it can take 5 years or more for a

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[3] Plan to Dramatically Increase Development Would Transform Some L.A. Neighborhoods, *Los Angeles Times*, March 25, 2018, available at: http://www.latimes.com/local/lanow/la-me-ln-housing-bill-transit-20180325-htmlstory.html

[4] San Francisco Planning Commission Cringes at Wiener's Transit-Housing bill. *SF Curbed.* March 16, 2018, available at: https://sf.curbed.com/2018/3/16/17130904/san-francisco-planning-commission-wiener-housing-transit

local jurisdiction to update its general plan, and the author's intent is to give locals time to update their planning documents, one solution is to delay the implementation of this bill for five years.

11) *What are the alternatives?* Some local jurisdictions are increasing access to denser affordable housing around transit. For example, the Los Angeles voters approved Measure JJJ and the Transit-Oriented Communities Program, which links increased density and reduced parking to affordable housing and replacement housing requirements. The South and Southeast Los Angeles Community Plan incorporate significant density increases along transit with affordable housing requirements and no net loss provisions. Local governments, as well as affordable housing and equity advocates, are concerned that this bill could undermine the application of these policies, which align with the author's stated intent.

Many organizations writing in opposition to this bill support the author's stated purpose of encouraging denser housing near transit with affordable housing requirements, but argue this approach overrides local planning authority and fails to take into account regional differences. Here are two alternative approaches:

a) *Work within existing density bonus law.* This could be done by providing greater density increases in exchange for higher percentages of affordable units on lower-density parcels around transit in localities that have not already adopted a plan or program to accomplish a similar goal.
b) *Set state-minimums for density and affordability requirements on vacant and redevelopment properties.* This would allow each jurisdiction to determine how best to meet these minimums and would require allow for regional and geographic differences around the state.

Another solution is to allow interested stakeholders, including local governments, housing and equity partners, and developers, to convene a working group in the fall to create an alternative approach that achieves the author's stated goals.

12) *Support.* Supporters of the bill note that the root of California's housing crisis is a failure to build homes and that this bill would permit millions of new homes at varying income levels to be built and assist with the housing crisis. They further contend that the effects of the bill, combined with strong anti-displacement protections, will encourage more low-income families in high-opportunity neighborhoods by opening up exclusionary neighborhoods to nonprofit developers. This will greatly benefit children in their educational

performance in the long run. Supporters note that the bill will decrease the costs to build houses, make housing less expensive overall for Californians, encourage homeownership, decrease regulatory barriers, and reduce approval processes.

13) *Opposition.* Those writing in opposition are concerned about overriding the local planning process. This bill conflicts with locally-driven transit-oriented plans, fails to consider the interaction with existing plans and density bonus law, and undermines the intent of state policies requiring community engagement in land use planning, especially in disadvantaged communities. One unintended consequence would be overturning plans that allow for limited residential uses in unincorporated communities outside of urban centers that have low-frequency transit service. The opposition is also concerned that the bill will override environmental justice elements, which are required to identify disadvantaged communities and that this bill would fuel opposition to future transit development.

14) *Double-referral.* This bill is double-referred to the Governance and Finance Committee.

RELATED LEGISLATION:

AB 73 (Chiu, Chapter 371, Statutes of 2018) — Allowed a city or county to create a housing sustainability district to complete upfront zoning and environmental review in order to receive incentive payments for development projects that are consistent with the district's ordinance. This measure required that at least 20% of the residential units constructed within the housing sustainability district be affordable to very low-, low-, and moderate-income households.

AB 1568 (Bloom, Chapter 562, Statutes of 2018) — This bill authorizes an enhanced infrastructure financing district (EIFD) to utilize local sales and use tax revenue for affordable housing on infill sites. The infrastructure financing plan requires that at least 20% of any new housing units constructed be affordable to persons and families of low or moderate income with at least 6% of the new units affordable to very income households and at least 9% of the new units affordable to persons or families of low income.

SB 35 (Wiener, Chapter 366, Statutes of 2017) — created a streamlined, ministerial approval process for infill developments in localities that have failed to meet their RHNA numbers. In jurisdictions that fail to meet their above moderate RHNA numbers or both their above moderate and lower income numbers, streamlined projects must dedicate a minimum of 10% of the total number of units

to housing affordable to lower-income households. In jurisdictions that fail to meet their lower-income targets, streamlined projects must dedicate at least 50%.

SB 540 (Roth, Chapter 369, Statutes of 2018) — authorized a city or county to establish a Workforce Housing Opportunity Zone (WHOZ) by preparing an environmental impact report (EIR) to identify and mitigate impacts from establishing a WHOZ and adopting a specific plan. A local government must approve a housing development within the WHOZ that meets specified criteria, and no project-level EIR or a negative environmental declaration would be required on a development within a WHOZ that meets specified criteria. At least 30% of the total units constructed or substantially rehabilitated will be sold or rented to persons and families of moderate income, or persons and families or middle income. At least 15% of the total units shall be sold or rented to lower-income households and at least 5% will be restricted for very low-income households.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 11, 2018.)

SUPPORT:

California YIMBY (sponsor)
Asian Americans Advancing Justice - California
Bay Area Council
Berkeley Design Advocates
Bridge Housing
California Apartment Association
California Asian Pacific Islander Chamber of Commerce
California Association of Realtors
California Building Industry Association
California Chamber of Commerce
California Housing Alliance
California Renters Legal Advocacy and Education Fund
Climate Resolve
Council of Infill Builders
Environment California
Habitat for Humanity California
Holland Partner Group
Mayor John Bauters, City of Emeryville
Natural Resources Defense Council

Orange County Business Council
Peninsula Young Democrats
San Francisco Planning and Urban Research
Silicon Valley Leadership Group
Silicon Valley Organization
State Board of Equalization Chairwoman Fiona Ma
Stand Up California
United Democrats Club
Valley Industry and Commerce Association
129 Individuals

OPPOSITION:

Acton Town Council
Affordable Housing Network of Santa Clara County
AIDS Healthcare Foundation
Alliance for Community Transit – Los Angeles
Alliance of Californians for Community Empowerment
American Planning Association California Chapter
Asian Americans Advancing Justice - California
Asian Pacific Environmental Network
Asian Pacific Policy and Planning Council
Atwater Village Neighborhood Council
Barbary Coast Neighborhood Association
Bend the Arc: A Jewish Partnership for Justice
California Contract Cities Association
California Housing Consortium
California Reinvestment Coalition
California Rural Legal Assistance Foundation
California State Association of Counties
Causa Justa: Just Cause
Central American Resource Center
Central Valley Division of League of California Cities
Chinatown Community Development Center
Citizen Marin
City of Agoura Hills
City of Albany
City of Bell
City of Bellflower
City of Beverly Hills
City of Brentwood
City of Burbank

City of Calabasas
City of Ceres
City of Chino Hills
City of Claremont
City of Colton
City of Compton
City of Costa Mesa
City of Covina
City of Culver City
City of Cypress
City of Delano
City of Diamond Bar
City of Downey
City of Duarte
City of Dublin
City of El Cajon
City of El Segundo
City of Foster City
City of Fountain Valley
City of Fremont
City of Glendale
City of Glendora
City of Gustine
City of Hanford
City of Hercules
City of Hesperia
City of Huntington Park
City of Indian Wells
City of Kingsburg
City of La Canada Flintridge
City of La Habra Heights
City of La Mirada
City of La Verne
City of Laguna Beach
City of Lakeport
City of Lakewood
City of Livermore
City of Los Banos
City of Malibu
City of Manhattan Beach
City of Manteca
City of Mill Valley

City of Mission Viejo
City of Monterey Park
City of Napa
City of Newark
City of Newport Beach
City of Norwalk
City of Novato
City of Oakdale
City of Orinda
City of Palmdale
City of Palo Alto
City of Pasadena
City of Pico Rivera
City of Piedmont
City of Pinole
City of Placentia
City of Pleasanton
City of Rancho Cucamonga
City of Rancho Palos Verdes
City of Redondo Beach
City of Reedley
City of Riverbank
City of Rocklin
City of Rosemead
City of San Bruno
City of San Marcos
City of San Marino
City of San Rafael
City of Sausalito
City of Scotts Valley
City of Signal Hill
City of Stanton
City of Sunnyvale
City of Torrance
City of Union City
City of Vallejo
City of Visalia
City of Waterford
City of West Covina
City of Whittier
City of Yorba Linda
Coalition for Economic Survival

Community Coalition
Community Development Technologies
Community Health Councils
Council of Community Housing Organizations
Corbett Heights Neighbors
Cow Hollow Association
Del Rey Neighborhood Council
Dolores Heights Improvement Club
East Los Angeles Community Corporation
Enterprise Community Partners
Esperanza Community Housing Corporation
Fair Rents for Redwood City
Gateway Cities Council of Governments
Genesis
Golden Gate Valley Neighborhood Association
Haight Ashbury Neighborhood Council
Hercules Mayor Chris Kelley
Housing California
InnerCity Struggle
Inquilinos Unidos
Investing in Place
Jobs to Move America
Koreatown Immigrant Workers Alliance
LA Voice PICO
League of California Cities
Legislative Committee of the Marin County Council of Mayors and Councilmembers
Linda Vista Planning Group
Little Tokyo Service Center
Livable California
Los Angeles Black Worker Center
Los Angeles City Council President Herb J. Wesson, Jr.
Los Angeles Community Action Network
Los Angeles County Bicycle Coalition
Los Angeles County of the League of California Cities
Los Angeles Forward
Los Angeles Neighborhood Land Trust
Manteca Chamber of Commerce
Marina Community Association
Mission Economic Development Agency
Move LA
Mountain View Tenants Coalition

Multicultural Communities for Mobility
Noe Neighborhood Council
North Area Neighborhood Development Council
North Bay Organizing Project
Norwalk Councilmember Jennifer Perez
P.I.C.O. Neighborhood Council
Pacific Palisades Community Council
Palisades Preservation Association
Physicians for Social Responsibility – Los Angeles
Public Advocates Inc.
Restaurant Opportunities Center of Los Angeles
Rural County Representatives of California
San Francisco Board of Supervisors President London N. Breed
San Francisco Tenants Union
Santa Monicans for Renter's Rights
Save the Hill
Senior and Disability Action
SF Ocean Edge
Sherman Oaks Homeowners Association
Sierra Business Council
Sierra Club California
South Bay Cities Council of Governments
Southeast Asian Community Alliance
St. John's Well Child and Family Center
Stand Up for San Francisco
State Building and Construction Trades Council, AFL-CIO
Strategic Actions for a Just Economy
Strategic Concepts in Organizing and Policy Education
T.R.U.S.T South LA
Tenants Together
Thai Community Development Center
Town of Corte Madera
Town of Danville
Town of Ross
Town of San Anselmo
Town of Windsor
UNITE HERE, AFL-CIO
United Neighbors in Defense Against Displacement
Urban Counties of California
Villa Park Councilmember Robert Pitts
Western Center on Law & Poverty
Women Organizing Resources, Knowledge and Services (WORKS)

99 Individuals

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SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2017 - 2018 Regular

Bill No:	SB 829	**Hearing Date:**	4/17/2018
Author:	Wiener		
Version:	4/9/2018 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alison Hughes		

SUBJECT: Employee Housing Act: agricultural employee housing

DIGEST: This bill expends the Employee Housing Act, which permits ministerial, by-right approvals to agricultural employee housing that is owned and maintained by a qualified housing organization.

ANALYSIS:

Existing law:

1) Establishes the EHA, which does the following:

   a) Permits an owner of employee housing, consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for single family or household, to be deemed an agricultural land use and does not require a conditional use permit, zoning ordinance, or other zoning ordinance. Agricultural employees may occupy the employee housing if they do not work on the property where the employee housing is located.

   b) Exempts the employee housing from business taxes, local registration fees, use permit fees, or other fees to which agricultural activities in the zone are not otherwise subject. Local property taxes, fees for water services and garbage collection, fees for normal inspections, local bond assessments, and other fees, charges, and assessments to which other agricultural activities in the same zone are permitted.

   c) Defines "employee housing," as any portion of any housing accommodation or property upon which housing accommodations are located, if all of the following factors exist:

      a) The housing accommodations or property are located in any rural area.

b) The housing accommodations or property are not maintained in connection with any work or workplace.
c) The housing accommodations or property are provided by someone other than an agricultural employer.
d) The housing accommodations or property are used by five or more agricultural employees of any agricultural employer or employers for temporary or permanent residency, as specified.

d) Defines "agricultural employee" or "employee" as one engaged in agriculture. The term "agriculture" includes farming in all its branches.

2) Requires a locality to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, and conditional use permit, zoning ordinance amendment or general or specific plan amendment and for the board of zoning adjustment or zoning administrator to hear and decide on those applications.

3) Requires, under the California Environmental Quality Act (CEQA), a lead agency to prepare or cause to be prepared and certify the completion of an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project would have a significant effect on the environment.

This bill:

1) Permits "agricultural employee housing" to take advantage of the Employee Housing Act. "Agricultural employee housing" is defined as employee housing that does not contain dormitory style housing and operated and maintained by a qualified affordable housing organization with a permit from an enforcement agency and occupied by an employee of an agricultural employer or a farm labor contractor.

2) Requires a qualified affordable housing organization to obtain a permit to operate and maintain agricultural employee housing from the enforcement agency, which shall be issued annually.

3) Permits a qualified affordable housing organization to submit an application for a permit to operate and maintain agricultural employee housing. The

enforcement agency shall review any application and grant the application if the following requirements are met:

a) The applicant is a qualified affordable housing organization, as certified by the Department of Housing and Community Development (HCD).
b) The applicant meets other requirements applicable to employee housing
c) The applicant commits to operate and manage the agricultural employee housing so long as the property is occupied by tenants who are employees.
d) Any other conditions prescribed by the enforcement agency on the use or occupancy of agricultural employee housing.
e) The agricultural employee housing complies with building standards related to employee housing and with all requirements of the State Housing Law.

4) Provides that a tenant residing in agricultural employee housing has all the rights applicable to a person residing in employee housing, including:

a) The right to file a verified complaint with the Department of Fair Employment and Housing;
b) Any protections for tenants or lessees; and
c) Any protections or rights under the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975.

5) Requires any person desiring to be certified as a qualified affordable housing organization shall submit an application to HCD. HCD shall review the application and grant the application if the person satisfies the following requirements:

a) A "qualified affordable housing organization" means:
    1) A local non-profit organization, as defined.
    2) A local public agency, as defined.
    3) A regional or national organization, as defined.
    4) A regional or national public agency, as defined.
    5) Any other organization or entity that the department determines, by regulation, is sufficiently similar to any of the organizations described in (1) – (4) above.
b) Be certified by HCD, based on demonstrated relevant prior experience in California and current capacity, as capable of operating the housing and related facilities for its remaining useful life, either by itself or through a management agent. HCD shall establish a process for certifying

qualified entities and maintain a list of entities that are certified, which list shall be updated at least annually.

c) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for employee households for 55 years.

d) Have no member among their officers or directorate with a financial interest in the agricultural employer.

COMMENTS

1) *Purpose.* According to the author, this bill "expands opportunities for building farmworker housing while maintaining strong worker protections. The state's housing shortage isn't just an urban problem—it affects rural areas, particularly those that depend on agriculture. Many farms have surplus land that could be used to build safe and secure housing for farmworkers, but the land needs to be rezoned. Unfortunately, this rezoning is often blocked by communities that don't want housing for farmworkers. This leads farmworkers to be housed in unsafe and crowded conditions, like in distant motels or in their cars, and hurts our ability to draw workers to California's farms. [This bill] expands an existing state process where farm owners and operators can dedicate agricultural land for employee housing. The owner of the housing will finance and develop it without delay or conditional approvals, provided it meets certain objective standards in the Health and Safety Code and passes inspections by the Department of Housing and Community Development. The housing must to be operated and managed by an independent non-profit to ensure that the worker-tenants have protections from employer intimidation, and workers will receive strict tenant, labor, and immigration protections."

2) *Employee Housing Program Background.* The Legislature enacted the EHA for the benefit of persons in privately owned and operated employee housing (typically farmworkers) to assure their health, safety, and general welfare, and to provide them a decent living environment. HCD's Employee Housing Program adopts and enforces statewide regulations for the construction, maintenance, use, and occupancy of privately owned and operated employee facilities providing housing.

   The EHA permits the housing to be constructed by-right (*i.e.* ministerially, or without discretionary review by a local jurisdiction) so long as the housing is in a rural area, the housing accommodations or property are not maintained in connection with any work or workplace, the housing accommodations or property are provided by someone other than an agricultural employer, and the housing accommodations or property are used by five or more agricultural

employees of any agricultural employer or employers for permanent or temporary residency. Employee housing may not contain more than 36 beds in a group quarters or 12 units or spaces designed for single family.

3) *Need for farmworker housing.* Recently, California has seen an influx in agricultural workers due to the increased use of a federal temporary worker program known as H-2A. Section 218 of the Immigration and Nationality Act authorizes the lawful admission into the United States of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. H-2A workers and domestic workers in corresponding employment must be paid special pay rates based on locality, provided housing and transportation from that housing to the job site, and must be guaranteed an offer of employment for a total number of hours equal to at least 75% of the work period specified in the contract.

   According to the Economic Policy Institute, the U.S. Department of Labor (DOL) certified 165,700 jobs to be filled by H-2A workers in fiscal year 2016, up 14% from 145,900 in 2015. The H-2A program in 2016 is two-and-a-half times larger than it was a decade ago in 2006, when 64,100 jobs were certified. The H-2A program has grown fastest in two states, one of which is California. In California, the number of jobs certified rose from 2,600 in 2006 to over 11,000 in 2016. Based on grower requests so far in fiscal year 2017, H-2A certifications could top 20,000 each in California.

   This surge of H-2A workers has created a shortage of affordable housing in cities like Salinas, Watsonville, and elsewhere. Workers must live in crowded motels, mobilehome parks, apartment buildings, and single family homes, which displaces other low-wage workers who live year-round in these regions.

   The intent of the bill is to encourage growers to build permanent housing projects on their existing land to accommodate a growing need for agricultural workers, particularly given the H-2A requirements for a grower to provide housing to visa holders. This bill would permit a grower to provide employee housing for their agricultural workers and for that housing to be permitted by-right.

4) *Employer and landlord.* The primary occupants of employee housing utilizing the employee housing program includes farmworkers, however the existing law only permits farmworkers to reside in the housing if they work off-site (*i.e.* another farm). The rationale is that a farmworker should not be placed in a position in which they depend upon their employer for their livelihood, as well as their housing. Farmers choose to provide employee housing under the

existing program as a means to supplement their income with rents from their tenants.

Last year, a similar bill, SB 530 (Vidak) was introduced and opposed by United Farmworker Union (UFW). The UFW noted that farmworkers are often in a vulnerable position due to their immigration status and language barriers. There was a concern with expanding the EHA to permit an employer to serve as a landlord because an employer could retaliate against their employees should they assert their labor rights, not only through loss of employment, but under the changes in that bill, through loss of a home and possibly deportation.

The author has sought to address these concerns by adding language to this bill that explicitly offers tenants in agricultural housing the benefits of existing California state tenant, fair employment and housing, and labor protections. In addition, the housing development must be maintained and managed by a qualified housing organization that is certified by HCD and subject to an annual permit by an enforcement agency. The HCD certification process further prohibits a grower from serving on the board of any non-profit organization that serves as the manager of the housing project.

5) *A useful tool?* The intent of this bill is providing a tool for growers to provide housing for their employees. It's not clear if it will actually be utilized given that the bill assumes a grower would be willing to pay for the construction of the housing project. Further, it's not clear if any nonprofits would be willing or able to utilize this structure. Some public housing authorities might be interested in administering such housing, but the housing would need to be open to the employees of all growers in the area. Private, non-profit housing developers would likely want to build, own, and operate the housing, including the land. The growers are interested generally in solutions to address the worker shortage but cannot speak to the overall interest in this approach.

   The California Coalition for Rural Housing has been working with several local, agricultural jurisdictions to create incentives for growers to dedicate their land for agricultural housing, such as tax incentives and the relaxing of local agricultural codes to permit agricultural land for housing. The author moving forward may wish to consider incorporating similar incentives to further encourage growers to take advantage of the provisions in this bill, which might prove more effective in encouraging the development of more farmworker housing.

6) *Enforcement Agency.* The bill references an enforcement agency throughout the bill, which is required to provide a permit for the operation and maintenance

agricultural employee housing. The author has not yet determined who that entity might be.

7) *Double-referral.* This bill is double-referred to the Judiciary Committee.

RELATED LEGISLATION:

SB 530 (Vidak, 2017) — would have required agricultural worker housing to be deemed an agricultural land use for purposes of the general plan and prohibited a locality from requiring a conditional use permit or other discretionary permit, except that the locality may apply height and setback requirements.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 11, 2018.)

SUPPORT:

None received.

OPPOSITION:

None received.

-- END --

SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2017 - 2018 Regular

Bill No:	SB 831	**Hearing Date:**	4/17/2018
Author:	Wieckowski		
Version:	4/9/2018 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alison Hughes		

SUBJECT: Land use: accessory dwelling units

DIGEST: This bill makes several changes to law governing accessory dwelling units (ADUs).

ANALYSIS:

Existing law:

1) States that a local government may, by ordinance, provide for the creation of ADUs and may designate areas where ADUs are permitted. State law provides that the ordinance shall contain specified provisions, including, but not limited to, the following:

   a) The ADU shall not exceed the allowable density for the lot upon which the ADU is located and that ADUs are a residential use that is consistent with the existing general plan and zoning designation for the lot.
   b) No set-back shall be required for an existing garage that is converted to an ADU.
   c) When a garage or carport is converted to an ADU and a local government requires that off-street parking spaces be replaced, the replacement spaces may be in any configuration on the same lot as the ADU.
   d) When a local agency receives its first application for an ADU permit, the application shall be considered ministerially, without discretionary review or a hearing within 120 days after receiving the application.
   e) A city may require owner occupancy for either the primary or the ADU.
   f) An ADU shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer fees.
   g) For an ADU contained within the existing space of a single-family residence or accessory structure with an independent exterior access, a local agency,

special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the ADU and the utility or impose a related connection fee or capacity charge.

h) Requires a local agency to submit a copy of the ADU ordinance to the Department of Housing and Community Development (HCD) within 60 days of the ordinance's adoption. HCD may review and comment on the submitted ordinance.

2) Provides that HCD shall notify a local government and the office of the Attorney General (AG) that the local government is in violation of state law if HCD finds that the housing element, an amendment to the housing element, does not substantially comply with this article, or if the local government has taken an action in violation of specified state housing and land use laws.

This bill:

1) Provides that a local agency may designate areas where ADUs may be excluded for fire and life safety purposes based on clear findings that are supported by a preponderance of the evidence.

2) Provides that the square footage of a proposed ADU shall not be considered when calculating an allowable floor-to-area ratio for the lot upon which the ADU is to be located.

3) Provide that no setback shall be required for an existing living area or accessory structure that is converted to an ADU, and a setback of no more than three feet from the side and real lines shall be required for an ADU that is not converted from an existing structure.

4) Provides that when a garage, carport, or covered parking structure is demolished in conjunction with an ADU or converted into an ADU, a local agency shall not require that those off-street parking spaces be replaced.

5) Reduces the application approval timeframe to 60 days and provides that if a local agency has not acted upon the submitted application within 60 days, the application shall be deemed approved.

6) Provides that an agreement with a local agency to maintain owner occupancy as a condition for issuance of a building permit for an ADU shall be void as against public policy.

7) Prohibits a local agency from implementing standards for minimum lot size requirements for ADUs and shall allow for the construction of an ADU on any lot that allows for construction of a home, unless specific findings are made by the local agency that the construction of the unit would adversely impact public safety.

8) Prohibits an ADU from being considered by a local agency, school district, or water corporation to be a new residential use for the purpose of calculating fees. An ADU shall not be subject to impact fees, connection fees, capacity charges, or any other fees levied by a local agency, school district, or water corporation.

9) Provides that where a building official finds that a substandard ADU presents an imminent risk to the health and safety of the building's residents, upon request by an ADU owner, a building official, in consultation with local fire and code enforcement officials, shall approve a delay of not less than 10 years of any California Building Standards Code requirement that is not necessary to protect the health and safety of the building's residents. The building official shall not approve a delay on or after January 1, 2029. This program shall remain in effect until January 1, 2039.

10) Provides that HCD may notify the AG if a local government has taken an action in violation of ADU law.

11) Permits HCD, after the adoption of an ADU ordinance, to submit findings to the local agency as to whether the ordinance complies with ADU law. If HCD finds that the local agency's ordinance does not substantially comply with ADU law, HCD shall notify the local agency and may notify the AG. The local agency shall consider findings made by HCD and may change the ordinance to comply with ADU law or adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite HCD's findings.

12) Permits HCD to review, adopt, amend, or repeal guidelines to implement uniform standards and criteria that supplement or clarify the terms, references, and standards in ADU law.

COMMENTS

1) *Purpose.* According to the author, "California's historic housing crisis necessitates innovative solutions. Multiple research and policy organizations have recognized accessory dwelling units (ADUs) as a critical piece of this

solution, including the McKinsey Global Institute, the Bay Area Council Economic Institute, President Obama's White House and the Terner Center for Housing Innovation. ADUs are affordable by design, costing 50-90% less to build than conventional infill development and are built with no cost to the state. In 2016, Governor Brown signed SB 1069 (Wieckowski, Chapter 720, Statutes of 2016), which eliminated the most onerous barriers to the construction of ADUs. As a result, there has been a proliferation of ADUs in California, with some jurisdictions seeing more than twenty-five times the amount of ADU permit applications in 2017 than the year prior. However, many homeowners continue to face barriers to constructing these units because of the barriers that still remain, such as excessive impact fees, lot size requirements, and code standards. This bill seeks to eliminate the remaining barriers to building ADUs by eliminating fees, creating an amnesty program for pre-existing ADUs, enhancing HCD's role in enforcing the law, and making changes related to lot-size requirements."

2) *What are ADUs?* ADUs, also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, are additional living spaces on single-family lots that have a separate kitchen, bathroom, and exterior access independent of the primary residence. These spaces can either be attached to or detached from the primary residence.

3) *Relaxing ADU requirements.* According to a UC Berkeley study, *Yes in My Backyard: Mobilizing the Market for Secondary Units,* second units are a means to accommodate future growth and encourage infill development in developed neighborhoods. Despite existing state law, which requires each city in the state to have a ministerial process for approving second units, the study found that local regulations often impede development. Easing these burdens to permit more ADUs could permit a family to rent out the unit (about 49% of the units) or provide housing for a family member (about 51% of the units). In fact, the study found that the average second unit was advertised at a rental rate that makes it affordable to a household earning 62% of the area median income. About 30% were affordable to households in the very low-income category, and that 49% were in the low-income category.

   The study, which evaluated five adjacent cities in the East Bay, concluded that there is a substantial market of interested homeowners; cities could reduce parking requirements without contributing to parking issues; second units could accommodate future growth and affordable housing; and that scaling up second unit strategy could mean economic and fiscal benefits for cities.

This bill relaxes requirements to the construction and permitting of ADUs by making the following changes:

a) A local agency may determine where ADUs may be excluded, as specified, rather than where they may be permitted.
b) The square footage of a proposed ADU shall not be considered when calculating an allowable floor-to-area ratio for the lot upon which the ADU is to be located.
c) Eliminates setback requirements for a living area or accessory structure converted to an ADU, and reduces the setback requirement to three feet from five feet for a new ADU.
d) Eliminates parking replacement requirements for garages, carports, or covered parking structures that are converted into ADUs.
e) Reduces the local approval timeframe from 120 days to 60 days. A failure to act within 60 days would result in the approval of the application.
f) Prohibits a local agency from implementing standards for minimum lot size requirements for ADUs and allows for the construction of an ADU on any lot that allows for construction of a home, unless specific findings are made by the local agency that the construction of the unit would adversely impact public safety.

4) *Amnesty program.* According to a 2016 report by McKinsey and Company entitled *A Took Kit to Close California's Housing Gap: 3.5 Million Homes by 2025,* one way to encourage homeowners to add ADUs is to create an amnesty path for ADUs that are not property permitted. According to the report, as many as 8% of the ADUs in San Francisco are illegal. The report concludes that legitimizing these units would boost building compliance and raise property tax revenue.

   This bill creates a 10-year amnesty program for substandard ADUSs. The bill grants an ADU owner with a non-compliant ADU a 10 year delay to make necessary changes to bring that ADU up to code. The delay applies to changes that, in the judgment of the local building official, and in consultation with fire and code enforcement officials, is not necessary to protect the health and safety of the building residents.

5) *HCD oversight.* Current ADU law requires a local agency to submit their ADU ordinances to HCD and permits HCD to review and provide comments on the ordinance. The committee spoke to HCD, who after a brief review, provided examples of calls from constituents:

1) Monterey County – No ADU ordinance at this time, but using provisions of the zoning code and general plan that are dated prior to the update of the current ADU statute
2) Downey – Adopted an interim ordinance to create a moratorium for the creation of ADU
3) Artesia – Limited minimum lot size to 10,000 sq. ft., resulting in a potential prohibition of the creation of ADU, as most lot sizes are around 5,000 sq. ft.
4) Coronado, La Habra, and Imperial Beach – Require replacement parking structures when an existing garage is converted to an ADU
5) West Covina – Limited minimum lot size to 12,000 sq. ft. and excessive side and rear setbacks

This bill would strengthen oversight over local ordinances by permitting HCD, after the adoption of an ADU ordinance, to submit findings to the local agency as to whether the ordinance complies with ADU law. If HCD finds that the local agency's ordinance does not substantially comply with ADU law, HCD shall notify the local agency and may notify the AG.

6) *Owner-Occupancy Issue.* Some jurisdictions, as authorized under existing law, have required the owner of the property to reside in the main home or in the ADU. The author has provided examples of lenders who have stated in writing that these covenants can preclude the lender from occupying the property if the lender must foreclose on the property. One letter states that if a property owner agrees to such a covenant, the owner could already be in violation of their deed of trust on the property and it "effectively transfers some of the rights from the property to the City, which could trigger a due on sale clause."

   This bill would strike the provision under existing law permitting a city to require a homeowner to reside in the property or in the ADU.

7) *Fees.* In 2016, the Legislature again revised the ADU law to reduce duplicative fees and reduce other barriers to the construction and approval of ADUs. As a result, ADU permit applications throughout the state have dramatically increased. A report by UC Berkeley's Terner Center of Housing Innovation recently discovered, however, that development and school fees, as well as lot size requirements and code standards, continue to suppress the construction of ADUs. ADUs are often charged with the same impact fees that a new home would be subject to. These fees can range anywhere between $5,000 and $60,000 and would not be charged to a homeowner for simply building an additional bathroom or bedroom.

The imposition of development fees serves many purposes; cities may charge fees to pay for the services they provide during the development process, as well as to offset the costs of new development incurred by the larger community. These fees, commonly known as impact or mitigation fees go towards infrastructure development (such as adding lanes to roads or supporting additional traffic) or other public benefits (such as new parks, schools, or affordable housing). Utilities impact fees pay for expansions of water, sewer, electricity, and gas infrastructure. In the wake of the passage of Proposition 13 in 1978 and the loss of significant amount of property tax revenue, local governments have also turned to development fees as a means to generate revenue. Given that California cities have tightly restricted funding sources, fees are one of the few ways that cities can pay for the indirect cost of growth.

Last year, as part of the 2017 Housing Package, the Legislature passed AB 879 (Grayson, Chapter 374), which requires HCD to complete a study to evaluate the reasonableness of local feels charged to new developments. The study, which is due to the Legislature by June 30th, 2019, must include findings and recommendations regarding amendments to existing law to substantially reduce fees for residential development.

Current law states that an ADU shall not be considered by a local agency, special district, or water corporation to be a new residential use for the purpose of calculating fees or capacity charges for utilities, including water and sewer fees. An ADU that is contained within an existing structure or living space shall not require an applicant to install a new or separate utility connection and the utility shall not impose a related connection fee or capacity charge. For newly built ADUs, the local agency, special district, or water corporation may require a new or separate utility connection. The connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed ADU, either by its size or number of plumbing fixtures upon the water or sewer system. This fee shall not exceed the reasonable costs of providing this service. This bill would exempt an ADU from impact fees, connection fees, capacity charges, or any other fees levied by a local agency, school district, or water corporation. ***The author may wish to consider removing provisions that limit or remove the ability for a local government to impose fees until the study has been completed.***

8) *Opposition.* The American Planning Association — California Chapter and several local agencies and associations representing them write in opposition to the prohibition against imposing fees related to services such as water and sanitation. Pursuant to the California Constitution and the Government Code, local agencies are already required to charge only the reasonable cost of

providing services. Due to these requirements, local agencies may not waive, discount, or establish different rates that pass on costs associated with obtaining water and wastewater services to the general consumer base or to other fee payers. New ADUs will require additional connections and impose increased demand, which are offset by the imposition of these fees. The American Planning Association notes that these additional services will have to be paid for elsewhere.

Cities writing in opposition echo concerns raised by local agencies, as well as the reduction in parking requirements and lot size requirements. Cities state these changes undermine local planning authority and the ability for cities to mitigate their impacts.

9) *Double-referral.* This bill is double-referred to the Senate Governance and Finance Committee.

RELATED LEGISLATION:

AB 72 (Santiago, Chapter 370, Statutes of 2017) — gave HCD authority to find a city's, county's, or city's and county's housing element out of substantial compliance if it determines that the city, county, or city and county acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the AG.

AB 494 (Bloom, Chapter 602, Statutes of 2017) — made technical, clarifying changes to ADU law.

SB 229 (Wieckowski, Chapter 594, Statutes of 2017) — made several changes to ADU law.

AB 2299 (Bloom, Chapter 735, Statutes of 2016) — made several changes to the ADU law.

SB 1069 (Wieckowski, chapter 720, Statutes of 2016) —made several changes to ADU law.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 11, 2018.)

SUPPORT:

Bay Area Council (Sponsor)
AARP
Abundant Housing LA
ADU Builder, Inc.
Basis Studio
Bay Area Rapid Transit (BART)
Bridge Housing
Build
California Apartment Association
California Association of Realtors
California Building Industry Association (CBIA)
California Community Builders
California Renters Legal Advocacy and Education Fund
California YIMBY
Coalition for Supportive Housing
Cover
Crest Backyard Homes
Corporation for Supportive Housing
The Fairmont San Francisco
Half Moon Bay Brewing Co.
Heller Manus Architects
HKS Architects
Inn at Mavericks
LA Más
Los Angeles Business Council (LABC)
Mavericks Event Center
McKinsey and Company
North Bay Leadership Council
Non-profit Housing Association of Northern California
Pacific Standard
Postmates
Resources for Community Development
ReVisions Resources
Rise Together
San Diego County Apartment Association
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco Housing Action Coalition
San Mateo County Economic Development Association (SAMCEDA)
Shorenstein Properties
SV Angel

Tim Lewis Communities
TMG Partners
Wareham Development
Webcor
1 Individual

OPPOSITION:

American Planning Association – California Chapter
Association of California School Administrators
Association of California Water Agencies
California Association of Sanitation Agencies
California Association of School Business Officials
California Coalition for Adequate School Housing
California Contract Cities Association
California Municipal Utilities Association
California School Board Association
California Special Districts Association
City of Camarillo
City of Coronado
City of Fullerton
City of Glendora
City of Hawthorne
City of Huntington Beach
City of Lake Forest
City of Lakewood
City of San Marcos
County of Del Norte
Desert Water Agency
East Orange County Water District
El Dorado Irrigation District
Marin County Council of Mayors and Councilmembers
Orange County Sanitation District

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SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2017 - 2018 Regular

Bill No:	SB 893	**Hearing Date:**	4/17/2018
Author:	Nguyen		
Version:	4/9/2018 Amended		
Urgency:	No	**Fiscal:**	No
Consultant:	Alison Hughes		

SUBJECT: Planning and zoning: density bonus

DIGEST: This bill would delete lowered parking ratios available to developers receiving a density bonus for 100% affordable rental housing projects, as specified.

ANALYSIS:

Existing law:

1) Defines "density bonus" as a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county.

2) Requires all cities and counties to adopt an ordinance that specifies how they will implement state density bonus law.

3) 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 any one of the following:

   a) 10% of the total units of a housing development for lower income households;
   b) 5% of the total units of a housing development for very low-income households;
   c) A senior citizen housing development or mobile home park
   d) 10% of the units in a common interest development (CID) for moderate-income households;
   e) 10% of the total units for transitional foster youth, disabled veterans, or homeless persons.

5) Provides that, upon the developer's request, the local government may not require parking standards greater than the following (the developer may, however, request additional parking incentives or concessions):

   a) Zero to one bedrooms: one onsite parking space;
   b) Two to three bedrooms: two onsite parking spaces; and
   c) Four or more bedrooms: two and one-half parking spaces.

6) Provides that if a rental development is 100% affordable to lower income families then, upon the request of a developer, a city, county, or city and county, the following parking ratios shall apply for the development:

   a) If the development is located within one-half mile of a "major transit stop" and there is unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit. "Unobstructed access" means a resident is able to walk to the major transit stop without encountering natural or constructed impediments.
   b) If the development is a for-rent housing development for individuals who are 62 years of age or older, the ration shall not exceed 0.5 spaces per unit. The development shall have either paratransit service or have unobstructed access, within one half-mile, to fixed bus route service that operates at least eight times per day.
   c) If the development is a special needs housing development, the ratio shall not exceed 0.3 spaces per unit. The development shall have either paratransit service or have unobstructed access, within one half-mile, to fixed bus route service that operates at least eight times per day.

7) Permits a city, county, or city and county to reduce or eliminate a parking requirement for developments of any type or location.

This bill:

1) Eliminates the reduced parking ratios for rental housing developments that are 100% affordable to lower-income families, upon the request of the developer.

2) Eliminates the provision permitting a locality to reduce or eliminate parking requirements for development projects in any location.

COMMENTS:

1) *Purpose.* According to the author, this bill "returns local control of housing developments to California city and county governments by removing onerous

prohibitions on parking requirements, thereby allowing local governments discretion on setting appropriate parking-to-unit ratios."

2) *Background of 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. Density bonus law 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 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 density bonus law 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.

   While a local government is not required to provide financial assistance or fee waivers, the incentives a local government must grant include any of the following:

   a) A reduction in site development standards;
   b) A modification of zoning code requirements (including a reduction in setbacks, square footage requirements, or parking spaces, or architectural design requirements that exceed the minimum building standards);
   c) Approval of mixed-use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development, and if such non-residential uses are compatible with the project; or
   d) Other regulatory incentives or concessions that result in identifiable, financially sufficient, and actual cost reductions.

3) *Sustainability goals and transit-oriented development.* AB 32 (Núñez, Chapter 488, Statutes of 2006) requires California to reduce greenhouse gas (GHG) emissions to 1990 levels by 2020. SB 375 (Steinberg, Chapter 728, Statutes 2008) supports the state's climate action goals to reduce GHG emissions

through coordinated transportation and land-use planning with the goal of more sustainable communities by requiring cities and counties to adopt sustainable communities strategies to show how development will support reduction in GHG emissions. A key component of reducing GHG is to move people out of their cars and into public transit. To encourage use of transit, some cities and counties have adopted policies like eliminating minimum parking requirements for projects that are close to transit where demand for parking spaces is low. They recognize that parking requirements prevent infill redevelopment on small lots where it is difficult and costly to fit both a new building and the required parking. They also see that parking requirements prevent new uses for older buildings that lack the required parking spaces.

Research has also demonstrated the positive relationship between income and vehicle miles traveled. A study by the Center for Neighborhood Technology, entitled *Income, Location Efficiency, and VMT: Affordable housing as a Climate Strategy*, created a model to isolate the relationship of income on VMT. This model found that lower-income families living near transit were likely to drive less than their wealthier neighbors. More specifically, in Metro Regions, home to two-thirds of California's population, identically-composed and located low-income households were predicted to drive 10% less than the median, very low-income households 25% less, and extremely low-income households 33% less. The patterns are similar for the other two regional contexts, although the differences are slightly reduced in Rural Areas.

4) *Cost of parking spaces.* Transform's GreenTrip program analyzed parking utilization at 68 affordable-housing developments throughout the Bay Area and found substantial overdevelopment of residential parking, at an extremely high cost. Surveying the buildings' parking lots at night when residents would be expected to be sleeping (with their cars in the on-site spaces), the study found that 31% of the 9,387 spaces were empty. The cost to construct those spaces amounted to approximately $139 million. The average construction cost per space, excluding land cost, in a parking structure in the United States is $24,000 for aboveground parking and $34,000 for underground parking. Certain types of parking — podium or subterranean — can increase parking costs by 6% or more relative to other types of parking.

Developments that are available only to low-income persons generally receive Low Income Housing Tax Credits (LIHTC) to finance the project. To compete for LIHTC, projects need to meet scoring criteria, including proximity to transit. While senior or special-needs projects are not required to meet the standard that they are within one-half mile of major transit, they will need to meet the transit requirements of the LIHTC.

Existing law, as required by AB 744 (Chau, Chapter 699, Statutes of 2015), requires cities and counties to waive costly minimum parking requirements upon request from of a developer, in cases where a development serves low-income persons. The development must be within one-half mile of a major transit stop, serve only persons over 62 years old, or serve persons with special needs.

This bill proposes to eliminate those reduced parking ratios. **The committee may wish to consider whether reversing the changes to AB 744 would run counter to the states greenhouse gas reduction goals. Additionally, the committee may wish to consider the practical implication of increasing parking requirements, as those additional costs for a developer could otherwise be utilized for the construction of affordable housing units.**

5) *Opposition.* The City of Glendora opposes this bill. The City writes that by eliminating some provisions and keeping others, the bill would eliminate any incentive to reduce the overflow of cars and likely inhibit the production of additional affordable housing units. The City proposes removing all parking minimum requirements from density bonus law and thereby directing all authority regarding parking ratio determinations back to local governments.

6) *Double-referred.* This bill is also referred to the Senate Governance and Finance Committee.

RELATED LEGISLATION:

AB 744 (Chau, Chapter 699, Statutes of 2015) — requires a city or county, upon the request of a developer that receives a density bonus, to provide specified lowered parking ratios than otherwise enumerated under density bonus law, for rental housing developments that are 100% affordable to lower-income families.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 11, 2018.)

SUPPORT:

None received.

OPPOSITION:

City of Glendora

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SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2017 - 2018 Regular

Bill No:	SB 1128	**Hearing Date:**	4/17/2018
Author:	Roth		
Version:	4/5/2018 Amended		
Urgency:	No	**Fiscal:**	No
Consultant:	Erin Riches		

SUBJECT: Common interest developments: governance

DIGEST: This bill provides that a homeowner association (HOA) in a common interest development (CID) may provide a document by electronic means if the recipient has consented by email; reduces the notice requirement of a proposed rule change by the HOA board from 30 days to 28 days; and provides that the nominees to a board shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board.

ANALYSIS:

Existing law:

1) Requires the election and removal of directors, amendments to governing documents, or the grant of exclusive use of common areas, to be held by secret ballot.

2) Provides that directors shall not be required to be elected if the governing documents provide that one member from each separate interest (e.g., unit or lot) is a director.

3) Requires the HOA to adopt election rules that do the following:

   a) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or websites during a campaign, and that equal access shall be provided to all candidates and members, for purposes reasonably related to the election.

   b) Ensure access to common-area meeting space at no cost to all candidates.

   c) Specify the qualifications for candidates for the board and any other elected position, and procedures for the nomination of candidates, consistent with

the governing documents. A rule shall not be deemed reasonable if it disallows any member from nominating himself or herself for election to the board.

d) Specifies the qualifications for voting; the voting power of each membership; the authenticity, validity, effect of proxies; and the voting period for elections. This includes the times at which polls will open and close, consistent with the governing documents.

e) Specifies a method for selecting one or three independent third parties as inspector or inspectors of elections. Inspectors may appoint or oversee additional independent third-party persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate.

4) Requires the inspector of elections to be one or three individuals who have the following duties:

a) Determine the number of memberships entitled to vote and the voting power of each
b) Determine the authenticity, validity, and effect of proxies
c) Receive votes and ballots and hear and determine all challenges and questions
d) Count and tabulate all votes
e) Determine when the polls will close
f) Determine the results of the election.

5) Permits the nomination of candidates from the floor of membership meetings or nomination by any other manner.

6) Permits a member of an association to bring a cause of action in small claims court against the HOA if the HOA restricts access to association resources by a candidate or member advocating a point of view; the receipt of the ballot by a member; or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after the tabulation.

7) Requires the HOA board to provide notice of a proposed rule change, as specified, at least 30 days prior to making the rule change.

8) Provides that if an HOA must deliver a document by "individual delivery" or "individual notice," it may deliver the document by email, fax, or other electronic means if the recipient has consented in writing to that method of delivery.

This bill:

1) Specifies that a recipient may consent by email to have a document delivered by the association via email, fax, or other electronic means.

2) Requires a board to provide general notice, pursuant to existing law, of a proposed rule change at least 28 days before making the rule change.

3) Provides that if, at the close of nominations, the inspector or inspectors of elections determines that the number of nominees is not more than the number of vacancies on the board, the nominees shall be considered elected by acclamation.

COMMENTS

1) *Purpose.* The author states that CIDs vary in purpose and size, from just a few units to several thousand. Larger CIDs may offer their residents significant amenities, such as golf courses, tennis and other recreational facilities, media services, and transportation services. Elected boards provide oversight for the operation and maintenance of facilities, as well as the annual budget. State law provides the framework for certain aspects of CID boards. Laguna Woods Village, sponsor of this bill, is home to more than 18,000 residents. They expect the board and management to assure that goods and services are provided in the most cost effective manner possible. To that end, Laguna Woods has identified three areas where improvements can be made: delivery of documents, notice requirements, and uncontested elections. This bill takes steps toward increased efficiency of operations by addressing these three areas.

2) *CID background.* A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of CIDs. There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or approximately one-quarter of the state's housing stock. CIDs are governed by HOAs. The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the association, collectively referred to as the governing documents.

3) *CID election procedures.* Existing law requires CID elections to be held by secret ballot and, among other things, an association must adopt rules around campaigning, specifying the qualifications for candidates for the board, qualifications for voting, and the method for selecting independent third-party election inspectors. Ballots and two pre-addressed envelopes with instructions for returning the ballot are mailed to every member not less than 30 days prior to the deadline for voting. The ballot is inserted into an envelope, which is placed in a second envelope and mailed to the inspectors. The votes are tabulated by the inspectors at a properly noticed open meeting of the board or members. The tabulated results must be reported promptly to the board and recorded in the minutes of the next meeting. Additionally, within 15 days of the election, the board must give general notice to all members of the election results.

4) *Uncontested elections.* This bill would provide that if the elections inspector determines that the number of candidates is equal to or less than the number of board vacancies, those candidates shall be considered elected by acclamation. Laguna Woods Village is a CID with three major developments within its boundaries, each governed by a board, totaling more than 12,500 units of senior housing. Laguna Woods Village states that in 2017 it spent approximately $20,000 on each of three elections, despite the fact that in all three cases the number of candidates did not exceed the number of available board seats. The sponsor states that the requirement to hold an election even when the outcome has effectively already been decided shifts resources away from other important needs.

5) *Precedent for election by acclamation.* Existing law relating to elections for school district boards, county boards of education, special district boards, and city councils indicates precedent for making the election-by-acclamation change to CID law:

   a) School districts, county boards of education, and special districts: If, by the end of the nominating period, the number of candidates does not exceed the number of vacancies, and no one has filed a petition signed by 10% of the voters or 50 voters (whichever is greater) requesting that an election be held, the nominees shall be appointed and seated as if elected.

   b) Municipal elections: If, by the end of the nominating period, the number of candidates is less than or does not exceed the number of vacancies, the city elections official shall inform the city's governing body that it may adopt one of the following courses of action: appoint the nominee, appoint an eligible individual if no one has been nominated, or hold the election.

6) *Electronic notice.* Existing law allows an HOA to deliver a document by email, fax, or other electronic means if the recipient has consented in writing to that method of delivery. This bill provides that a recipient may consent by email to the method of delivery. Some documents, such as annual budgets and annual policy statements, can run to hundreds of pages and can be costly to deliver in hardcopy. The sponsor notes that while residents are often reluctant to submit a written request for delivery of documents by electronic means, they are much more inclined to submit such a request via email.

7) *30-day notice on rule changes.* Existing law requires an HOA board to provide notice of a proposed rule change to its residents at least 30 days prior to making the change. Laguna Woods Village notes that shorter months create delays in important decisions. For example, if a board meets on the first Tuesday of each month, in short months there are not 30 days between the first Tuesday in one month and the first Tuesday in the next. Indeed, the sponsor notes that in one 12-month period, eight meetings did not meet the 30-day requirements for two of its boards and nine did not meet it for the third board, meaning that actions had to be delayed another month. To alleviate such delays, this bill would reduce the notice period to 28 days.

8) *Opposition arguments.* Opponents argue that this bill takes away the constitutional right to vote. Opponents state that allowing election by acclamation would enable an HOA board to ignore or prevent nominations of non-incumbents and then determine that no election is required due to an insufficient number of candidates. Existing law requires HOAs to adopt rules that include, among other things, procedures for the nomination of candidates. State law does not establish specific requirements on the nomination procedures, but does require HOAs to adopt rules and rule changes through a specified public process.

9) *Double referred.* This bill will also be heard by the Senate Judiciary Committee.

RELATED LEGISLATION:

SB 1265 (Wieckowski, 2018) — makes several changes to the elections process held in CIDs, as well as making changes the process for handling disputes between a member and an HOA. *This bill is pending before this committee.*

AB 1799 (Mayes, 2016) — would have exempted HOAs in CIDs from election procedure requirements in uncontested elections. *This bill was passed by the*

Senate Transportation and Housing Committee but died in the Senate Judiciary Committee.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 11, 2018.)

SUPPORT:

Laguna Woods Village (sponsor)
California Association of Community Managers
Community Associations Institute of California
Third Laguna Hills Mutual Board of Directors
United Laguna Woods Mutual Board of Directors
4 individual

OPPOSITION:

California Land Title Association
1 individual

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SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2017 - 2018 Regular

Bill No:	SB 1265	**Hearing Date:**	4/17/2018
Author:	Wieckowski		
Version:	4/2/2018 Amended		
Urgency:	No	**Fiscal:**	No
Consultant:	Alison Hughes		

SUBJECT: Common interest developments: elections

DIGEST: This bill makes several changes to the elections process held in common interest developments (CIDs). It also makes changes to the process for handling disputes between a member and a homeowner's association (HOA).

ANALYSIS:

Existing law:

1) Provides that an HOA in a CID shall adopt rules relating to board elections that do all of the following:
   a) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election.
   b) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.
   c) Specify the procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member from nominating himself or herself for election to the board.
   d) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.
   e) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections, as specified.

f) Allow the inspector or inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties.

2) Requires, at all times, the sealed ballots to be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed for challenging the election has expired, at which time custody shall be transferred to the HOA.

3) Requires the HOA to select an independent third party or parties as an inspector of elections. An independent third party may not be a person, business entity or subdivision of a business entity who is currently employed or under contract to the HOA for any compensable services unless expressly authorized by the HOA.

4) Permits a member of an HOA to bring a civil action against an HOA for declaratory or equitable relief for a violation of the member elections provisions under the Davis-Sterling Act including but not limited to injunctive relief, restitution, or a combination, within one year of the date the cause of action accrues. Upon a finding that the election procedures were not followed, a court may void the results of the election.

5) Permits a prevailing party in a civil action described in (4) to be entitled to reasonable attorney's fees and court costs, and the court may impose a penalty of up to $500 for each violation.

6) Provides that a cause of action with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court.

7) Requires an HOA to provide a fair, reasonable, and expeditious procedure for resolving a dispute between an HOA and a member and shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs. The HOA's internal dispute resolution procedure, invoked by either party to the dispute, shall, at a minimum, satisfy specified requirements.

8) Prohibits an HOA or a member from filing an enforcement action in the superior court unless the parties have endeavored to submit their dispute to alternative dispute resolution. This prohibition only applies to an enforcement

action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits and does not apply to small claims actions or assessment disputes.

This bill:

1) Requires election rules be adopted at least 90 days before any election and that the rules require any errors or omissions to the list of candidates' names or list of voters to be immediately reported to the inspector or inspectors and require necessary corrections to be made within two business days.

2) Requires that the HOA ensure that the meeting at which ballots are counted is accessible to persons with disabilities.

3) Requires notice be provided of all of the following:

   a) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections.
   b) The date and location of the meeting at which ballots will be counted.
   c) The procedure and deadline for submitting a nomination, which shall be provided at least 30 days before that deadline.
   d) The list of all candidates' names that will appear on the ballot, which shall be provided at least 30 days before the ballots are distributed.
   e) The list of all voters by either name or parcel number, and voting power.

4) Requires the elections rules to do all of the following:

   a) Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.
   b) Prohibit the denial of a ballot to a person with power of attorney for a member.
   c) Require the ballot of a person with power of attorney for a member to be counted if returned in a timely manner.
   d) Require the inspector or inspectors of elections to deliver, or cause to be delivered, at least 30 days before an election, to each member both of the following documents:

      i) A copy of the election operating rules.
      ii) The ballot or ballots.

5) Removes references in the rules that permit the identification of qualifications for candidacy or voting.

6) Adds that signed voter envelopes and a candidate registration list shall be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote and until the time allowed for challenging the election has expired.

7) Prohibits an HOA's rules from permitting any person, business, or subdivision of a business entity currently employed or under contract with the HOA for any compensable services from serving as an inspector of elections.

8) Requires ballots, signed voter envelopes, voter lists, and candidate registration lists to be association records subject to inspection and copying by a member.

9) Provides that a cause of action for a violation of member elections may be brought within one year of the date that the inspector or inspectors notify the HOA board and membership of the election results or the cause of action accrues, whichever is later.

10) Requires a court to void the results of an election upon a finding that the election procedures were not followed, unless the HOA establishes by clear and convincing evidence that the failure of the HOA to follow this article or the election operating rules were unintentional and did not affect the results of the election.

11) Requires a member to be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action if the member prevails in a civil action in small claims court.

12) Permits a cause of action with respect to access to HOA resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation or reporting of, or access to, ballots for inspection and review after tabulation may be brought either in superior court or, if the amount of the demand does not exceed the jurisdictional amount of the small claims court, in small claims court.

13) Prohibits an HOA from filing a civil action regarding a dispute in which a member has requested internal dispute resolution unless the association has participated in the specified internal dispute resolution procedure.

14) Prohibits an HOA or member to file an enforcement action solely for declaratory, injunctive, or write relief in superior court without first pursuing alternative dispute resolution for an assessment dispute.

COMMENTS:

1) *Purpose.* According to the author, this bill better ensures fair HOA elections by ending the practice of depriving a member the right to vote or run in an HOA election simply because the member has a dispute with the HOA board. The bill also requires the location that ballots are counted be accessible to members with disabilities, and specifies other timing and procedural requirements for HOA elections.

2) *CIDs.* A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of common interest developments. There are over 50,220 CIDs in California that comprise over 4.8 million housing units, or approximately one-quarter of the state's housing stock. CIDs are governed by an HOA. The Davis-Stirling Common Interest Development Act (Act) provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the association, collectively referred to as the governing documents. CIDs are governed by an HOA, which is run by volunteer directors that may or may not have prior experience managing an association. The Court of Appeal, Fourth Appellate District, previously observed that:

"[t]he homeowners associations function almost 'as a second municipal government, regulating many aspects of [the homeowners'] daily lives.'... As a 'mini-government,' the association provides to its members, in almost every case, utility services, road maintenance, street and common area lighting, and refuse removal. In many cases, it also provides security services and various forms of communication within the community." (*Villa Milano Homeowners Ass'n v. Il Davorge* (2000) 84 Cal.App.4th 819, 836)

In order to perform its obligations under the governing documents, HOAs levy regular and special assessments. If a member is delinquent in paying an assessment, the HOA may recover reasonable costs incurred in collecting assessments, a late charge, and interest, as specified. An HOA may also impose

a lien on the separate interest of the member if an assessment is past due, as specified.

3) *Access to ballot counting and voting.* Just as with municipal governments, homeowner associations use elections to choose members to serve on an association's board of directors. Under existing law, HOAs conduct elections through a paper and mail based balloting system that resembles California's vote by mail process.

   The author is seeking to provide more transparency in the ballot counting process to ensure a fair elections process. The sponsors point to examples where homeowners were barred or otherwise discouraged from being near the ballot counting location. In one instance, the inspectors shared how many ballots were discarded or considered ineligible but homeowners are not able to view the process of opening the ballots. The sponsors also point to instances in which a property manager has served as an elections inspector. Exclusion from the process only leads to further distrust between homeowners and the board.

   In order to ensure homeowners have access to the ballot counting process, this bill requires notice of the time and location of ballot counting, as well as access to persons with disabilities. This bill would prohibit third parties from serving as inspectors if they are currently employed or under contract with the HOA for any compensable services. It further prohibits the denial of a ballot to a member, or person with power of attorney, for any reason other than not being a member at the time when ballots are distributed.

4) *Denial of candidacy.* According to the sponsors, HOAs use the elections rules as a means to prohibit a resident member from voting in an election. These rules can be used as a means of punishment for members who may have a dispute with the management or the management finds the resident to be in violation of HOA rules. This tactic can be used to keep specific board members in power and avoid would-be challengers. For example, the sponsors point to a court case involving an HOA that prohibited members from running for the board if they were presently involved in a legal action against the HOA. Other examples include age requirements, living in the HOA for a specified period of time, being current in assessments, and passing a background check. Existing law permits an HOA to enforce HOA rules in several ways, such as placing a lien on property when a member fails to pay his or her assessment fees. HOAs may also fine, impose disciplinary actions, and sue members for violating HOA rules and governing documents.

This bill prohibits an HOA from disallowing a member from being nominated for any other reason other than not being a member. It requires the election rules to provide notice of the procedure and deadline for submitting a nomination, at least 30 days before the deadline. Additionally, the bill requires that the notice shall a list of all the candidate's names that will appear on the ballot.

The opposition notes that there are legitimate reasons to prohibit a member from candidacy, such as a criminal conviction for embezzlement or other financial crime, or preventing a consolidation of power, such as two spouses both serving on a board in a community with a small board membership. **The author moving forward may wish to instead create a tailored list of disqualifications from candidacy for the board rather than a blanket prohibition.**

5) *ADR.* An HOA is required to provide a "fair, reasonable, and expeditious procedure for resolving a dispute" between the HOA and a member involving the rights, duties or liabilities under the Davis-Stirling Act or the HOAs governing documents. This procedure is referred to as Internal Dispute Resolution (IDR), the purpose of which is to provide a non-judicial forum to resolve disputes between a member and the HOA that will not result in a fee or a charge to the member. Existing law requires parties to attempt to participate in alternative dispute resolution (ADR) before filing an enforcement action in court. Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside of the courtroom, typically negotiation, conciliation, mediation, and arbitration. However, if a member initiates IDR, the HOA, under existing law must participate in the procedure. According to the sponsors, some HOAs are either not meaningfully participating in the IDR process or are not waiting for its completion before seeking legal action. This bill would require participation in the IDR process before filing any action in court, thus potentially reducing the need to resolve disputes in court.

6) *Opposition.* Opponents are concerned about the elimination of minimum candidate qualifications for the HOA board. CACM states that most associations currently only require basic minimums, including prohibiting felons convicted of financial crimes and requiring a candidate be a member in good standing (i.e. current on their monthly assessments). CACM also writes that the expansion of the internal dispute resolution requirements is unnecessary because the statute already requires an HOA to go through the process if requested by a homeowner. CAI-CALC states that the provisions around elections transparency raise privacy concerns given that the bill requires a list of voters by name or parcel number to go to all members, and that ballots would

be available to any member. They also state that these requirements would add significantly to the cost of an election.

7) *Double-referral.* This bill is double-referred to the Senate Judiciary Committee.

RELATED LEGISLATION:

SB 1228 (Roth, 2017) — provides that a homeowner association (HOA) in a common interest development (CID) may provide a document by electronic means if the recipient has consented by email; reduces the notice requirement of a proposed rule change by the HOA board from 30 days to 28 days; and provides that the nominees to a board shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board. *This bill is pending before the Senate Transportation and Housing Committee.*

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 11, 2018.)

SUPPORT:

Center for California Homeowner Association Law (sponsor)
El Dorado Institute, Inc.
1 individual

OPPOSITION:

California Association of Community Managers (CACM)
Community Associations Institute – California Legislative Action Committee (CAI-CLAC)

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SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2017 - 2018 Regular

Bill No:	SB 1296	**Hearing Date:**	4/17/2018
Author:	Glazer		
Version:	4/5/2018 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alison Hughes		

SUBJECT: Department of Housing and Community Development: database of local fees

DIGEST: This bill requires local governments and special districts to annually report their fees on new developments to the Department of Housing and Community Development (HCD), and for HCD to collect and publish the data in a database.

ANALYSIS:

Existing law:

1) Requires HCD, by June 30, 2019, to complete a study evaluating the reasonableness of local fees charged to new developments. The study shall include findings and recommendations regarding potential amendments to the Mitigation Fee Act to substantially reduce fees for residential development.

2) Requires localities to include specified information as part of the annual general plan report to the legislative body, the Governor's Office of Planning and Research, and HCD.

3) Establishes the Mitigation Fee Act, which requires any city that establishes, increases, or imposes a fee as a condition of approval of a development project to do all of the following:

    a) Identify the purpose of the fee;
    b) Identify how the fee will be used;
    c) Demonstrate there is a reasonable relationship between the purpose of the fee and the type of development project on which the fee imposed;
    d) Demonstrate that there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

4) Requires, prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or service charge, a local agency to hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. The local agency shall also provide notice, as specified.

5) Requires a city to deposit, invest, account for, and expend such fees to make findings once every fifth year regarding any portion of the fee remaining unexpended or uncommitted; to identify within 180 days of determining that sufficient funds have been collected, an approximate date of commencing construction of improvements, or else to refund unexpended fees; and to adopt capital improvement plans.

6) Permits a developer to challenge the imposition of a fee, dedication, or other exaction if the developer follows a specified procedure that includes protesting the fee in writing.

This bill:

1) Requires cities and counties, as part of the annual general plan report, to include the fees that the local government charges on new developments.

2) Requires special districts to report to HCD by April 1 of each year the fees charged by the special district to new developments.

3) Requires HCD, by December 31st, 2019 to collect the data submitted by special districts and cities and counties related to the fees imposed on new developments and publish the data in a database. HCD shall periodically update the database.

COMMENTS

1) *Purpose.* According to the author, "this bill would require HCD to create a database of fees associated with housing development by jurisdiction. One of the biggest cost drivers of housing construction is local fees levied on housing projects. Each local jurisdiction and special district can assess these fees as a condition of development within their jurisdiction. Requiring HCD to develop a comprehensive fee database allows the public to compare fees across jurisdictions and analyze the reasonableness of such fees in relation to housing costs."

2) *Development fees.* Development fees serve many purposes and can be broadly divided into two categories: service fees and impact fees. Service fees cover staff hours and overhead, and are used to fund the city's role in the development process such as paying for plan reviews, permit approvals, inspections, and any other services related to a project moving through city departments. Impact fees refer generally to fees that offset the public costs of new infrastructure incurred by the larger community. Some examples include adding lanes to roads or supporting additional traffic, or other public benefits such as new parks, schools, or affordable housing. Aside from local governments, other entities, such as school districts and utility companies, also have the authority to levy development fees. School fees to charge a specific amount to new development based on a per-square-foot calculation, while utility fees are related to connectivity to services including water and sewer and may not exceed the estimated reasonable costs of providing the service for which the fee or charge is imposed.

   In the wake of the passage of Proposition 13 in 1978 and the loss of significant property tax revenue, local governments have also turned to development fees as a means to pay for new infrastructure. Given that California cities have tightly restricted funding sources, fees are one of the few ways that cities can pay for the indirect cost of growth.

   According to a March 2018 report by the UC Berkeley Terner Center for Housing Innovation, entitled *It All Adds Up: The Cost of Housing Development Fees in Seven California Cities*, between 2008 and 2015, California fees rose 2.5%, while the national average decreased by 1.2%. The report points to studies that have found that fees can comprise 17% of the total development costs of new housing; in California development fees were nearly three times the national average in 2015.

3) *Mitigation Fee Act.* The Mitigation Fee Act sets specific requirements that a city must follow in establishing or imposing development fees. This includes: identifying the purpose of the fee and how the fee will be used; demonstrating there is a reasonable relationship between the purpose of the fee and the type of development project on which the fee imposed; and demonstrating that there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed. Additionally, it sets forth a process by which a developer may challenge the imposition of a fee. Anecdotally, the League of California Cities and the California State Association of Counties pointed to some of their member jurisdictions that post their fee schedules to their web sites as a courtesy to the public, even though it is not required.

This bill requires HCD to create a database that will be made publicly available and updated periodically, that contains the fees imposed on new developments for all 482 cities, 58 counties, and 4,000 special districts in California.

Last year, the Legislature passed and the governor signed a package of 15 housing bills as a comprehensive package. Together, this package provided an ongoing source of funding for affordable housing construction, a $4 billion housing bond to provide an immediate infusion of funds into housing for veterans, and low- and moderate-income families, as well as several streamlining and land use measures designed to facilitate and foster opportunities for increased housing production. In order to implement that package, the Department of Housing and Community Development is requesting about 81 new staff in this year's budget, as well as 65 additional staff in the next two budget years.

Creating a fee database and updating it periodically will likely require a significant use of public resources and time. *Given the workload HCD is already under, the committee may wish to consider whether creating a statewide database is a priority at this time. The author moving forward may wish to consider instead requiring the local agencies to make the information available on their web sites.*

4) *Ongoing Fee Cost Study.* Last year, as part of the 2017 Housing Package, the Legislature passed AB 879 (Grayson, Chapter 374), which requires HCD to complete a study to evaluate the reasonableness of local feels charged to new developments. The study, which is due to the Legislature by June 30th, 2019, must include findings and recommendations regarding amendments to existing law to substantially reduce fees for residential development. This bill recognized that, in order to address the statewide housing shortage, more units need to be built at a lower per-unit cost. This bill will help inform the legislature of ways to reduce feeds for residential development in a comprehensive manner. ***The committee may wish to consider whether it is premature to invest valuable public resources to a new statewide database when a study is already underway to provide policy recommendations for reducing housing cost, overall in a little over a year from now.***

RELATED LEGISLATION:

AB 879 (Grayson, Chapter 374, Statutes of 2017) — required HCD to complete a study to evaluate the reasonableness of local feels charged to new developments.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 11, 2018.)

SUPPORT:

Association of California Cities – Orange County
Bridge Housing
California Apartment Association
California Association of Realtors
California Housing Consortium
California YIMB
Habitat for Humanity California

OPPOSITION:

None received.

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SENATE COMMITTEE ON TRANSPORTATION AND HOUSING
Senator Jim Beall, Chair
2017 - 2018 Regular

Bill No:	SB 1415	**Hearing Date:**	4/17/2018
Author:	McGuire		
Version:	4/4/2018		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Randy Chinn		

SUBJECT: Housing

DIGEST: This bill requires building inspections of specified industrial and storage structures, authorizes fees to cover inspection costs, requires reporting of the backlog of mandated building inspections by local governments, and generally extends existing tenant protections and notifications to buildings which are used for human habitation, as distinct from residential buildings.

ANALYSIS:

1) Inspections

Existing law requires local officials, typically the local fire chief or his/her representative, to conduct annual fire safety inspections on K-12 schools, multi-family dwellings and high rise dwellings, and requires the State Fire Marshall to biannually inspect jails and prisons. Fees to conduct these inspections are authorized.

2) This bill requires:

a) Local governments to annually report to the State Fire Marshall on the number of structures which it is required to inspect and the number which are overdue for inspection. These reports shall be published on the State Fire Marshal's website.

b) Local governments to, at least every five years, inspect specified industrial and storage structures, as defined, for which the local government may assess a fee.

3) Abatement Notices

Existing law requires an enforcement agency that finds a building in violation of the California Building Standards Code to notify the owner to abate the violation.

This bill requires that such notice shall specifically identify the needed repairs and the codes being violated, with specific exemptions.

4) *Receivership*
Existing law authorizes enforcement agencies, tenants, or tenant associations to petition a court to appoint a receiver for a substandard building if the owner fails to comply within a reasonable time with the terms of the notice of violation. The receiver takes complete control of the building, including management and repairs to remedy any violations. The court has broad discretion in its decision.

This bill narrows the discretion of the court by requiring that a receiver be appointed unless the owner can provide clear and convincing evidence that the existing law regarding code violations and notice requirements were not followed. This bill also clarifies that a receiver can be appointed for any property used for human habitation.

5) *Relocation Benefits*
Existing law provides for the payment of relocation benefits to a tenant who is displaced because of a building violation that endangers the immediate health and safety of the residents.

This bill provides that existing tenant relocation benefits shall be extended to any unit used for human habitation, regardless of zoning designation.

6) *New Crimes*
This bill creates new crimes regarding interfering with the lawful actions of any fire marshal or code enforcement officer, as defined.

7) *Numerous Clarifications*
Existing law allows enforcement agencies to enforce provisions of the California Building Standards Code. This bill clarifies that enforcement agencies may also enforce their municipal codes and municipal building and fire codes.

Existing law requires enforcement agencies to provide each resident with copies of any notices of violation, orders and permits. This bill clarifies that these notices shall also be posted on the building.

Existing law provides that receivers are entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclosed properties. This

bill clarifies that any person, who acquires a property which is in violation of building codes and is in receivership, shall be responsible for any costs and fees of the receiver and the enforcement agency.

COMMENTS

1) *Author's Statement.* Warehouses and factory spaces sometimes are converted to residential use without the knowledge of local officials. These buildings aren't covered under state laws mandating fire inspections, meaning that unsafe conditions can go undetected for years. Even if local officials discover a dangerous building, variation in how judges interpret the law make it difficult for locals to use all of their available tools, particularly when a space is used as an unpermitted residence. At the same time, not all jurisdictions make it easy to bring buildings up to code. Notices of violation often don't tell building occupants what they need to fix or how to fix it. SB 1415 responds by beefing up local inspections by ensuring that spaces often used as unpermitted residences are regularly inspected, and allows local officials to charge a fee to cover those inspections. It also ensures accountability by requiring reports on inspections already mandated by law. Once a dangerous building is discovered, SB 1415 improves the tools that local governments have by ensuring that receivership laws and relocation benefits apply to any space used for habitation, regardless of legal status, and by removing other hurdles to enforcement. Finally, SB 1415 makes it easier for tenants and landlords to bring buildings up to code by directing local officials to identify specific violations of building codes and offer advice on how to fix those violations.

2) *Ghost Ship Fire.* In December 2016, a deadly fire at an Oakland warehouse, known as the Ghost Ship, killed 36 people, the highest death toll for a structural fire in the United States in over ten years. The Ghost Ship was a two-story warehouse that had been leased to artists who lived and worked in the building, periodically using it for events. Zoned as a warehouse, neither residential nor assembly uses were permitted by the city. Issues with the Ghost Ship had surfaced prior to the fire: The City of Oakland documented 39 code enforcement inspections and 10 code enforcement complaints of the warehouse and the adjacent vacant lot between 2004 and 2016. Media reports suggest that the Ghost Ship hadn't been inspected in 30 years. Had an inspection occurred, officials could have raised concerns about the safety and occupancy of the building.[1] Two people, including the property manager, have been criminally charged because of the deaths. The Senate Committee on Governance and

[1] The Oakland Fire Department's Origin and Cause Report, Incident # 2016-085231, showed pictures of an eclectic and crowded interior with non-standard multi-story construction and apparently unpermitted occupancy.

Finance (G&F) convened two informational hearings to understand the issues around this fire. This bill is one of the work products of those hearings.

3) *Taking a Closer Look.* The heart of this bill is the new requirement on local governments to inspect specified industrial and storage structures every five years. These structures include buildings used for assembly, manufacturing, packaging, repair and storage, including of hazardous materials. (Current law gives local governments the discretion to determine how often these structures should be inspected.) Additionally, this bill requires local governments to annually report to the State Fire Marshal on how many structures they are required to inspect and how many are overdue for inspection. By publishing this information the author intends to increase the incentive for local governments to perform these required inspections. It appears that some local governments have not kept up with these mandatory inspections: Testimony in the Senate G&F committee hearing by a representative of the California Building Officials indicated that annual inspections are a burden on the local government's general fund, and are typically done in reaction to a complaint. It's not clear why annual inspections should impact the general fund, as local governments have the authority to impose inspection fees. However, as noted below, the author is authoring a second bill, SB 1416, which authorizes local governments to impose a lien on properties for payment of inspection fees.

4) *Be Specific.* One of the concerns articulated in the Senate G&F committee hearings was that the notices to correct building code violations can be too general, leaving the building owner without a clear path to clearing the violations. This bill requires that these notices identify the specific features that need repair, the types of repairs that are needed, and the specific code provisions being violated. If the enforcement agency determines that preparing such a notice prevents the agency from acting on an immediate threat to public health and safety, the agency can issue a more general violation notice and follow up with the more detailed notice within 10 days.

5) *Putting Down the Hammer.* A property owner who fails to heed notices to repair building code violations that are a substantial danger to the health and safety of residents or the public is subject to losing control of that property to a receiver selected by the court. The receiver manages the building, pays the expenses, collects the rent, and contracts to obtain the necessary repairs to fix the violations at the owner's expense. Whether a building goes into receivership is decided by a judge, who has broad latitude. This bill limits that discretion, requiring the judge to appoint a receiver unless there is clear and convincing evidence that the laws regarding the identification and notification of the violations weren't followed.

6) *New Crimes.* This bill creates new misdemeanors for 1) interfering with fire marshals or code enforcement officers, 2) disobeying orders from fire marshals or code enforcement officers, 3) engaging in disorderly conduct which prevents a dangerous building from being secured in a timely manner, 4) preventing others from assisting in the securing of a dangerous building. Media reports suggest that the Ghost Ship property manager refused to admit local building inspectors into the building.

7) *Double Team.* SB 1416 (McGuire) also results from the G&F Committee hearings on the Ghost Ship fire. This bill, which is pending in the G&F Committee, allows, until January 1, 2024, cities and counties to collect fines for nuisance abatement through a special assessment and an abatement lien on the property that harbored the nuisance.

8) *Another Facet of our Housing Crisis.* Survivors of the Ghost Ship fire have noted that one of the primary reasons for living in an unpermitted warehouse was the low cost. Rising rents have priced many out of California's communities. One solution has been to create housing out of buildings that were never meant to be homes. While perhaps this can be done safely, the Ghost Ship fire is a horrific example of how this can end badly. Bringing unsafe structures up to code can be costly and will inevitably result in higher rents to cover the building owner's costs, undoing what makes these spaces attractive. Many owners will elect not to pay for the renovation and simply evict the tenants, an unfortunate result of ensuring that structures are safe for their uses.

9) *Double referral.* This bill is double referred to the Public Safety Committee.

RELATED LEGISLATION:

SB 1416 (McGuire, 2017) — Allows, until January 1, 2024, cities and counties to collect fines for nuisance abatement through a special assessment and an abatement lien on the property that harbored the nuisance. This bill is pending in the Senate Governance and Finance Committee.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 11, 2018.)

SUPPORT:

None received.

OPPOSITION:

None received.

-- END --