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

Bill No:	SB 765	Hearing Date:	8/31/18
Author:	Wiener		
Version:	8/27/2018		
Urgency:	No	Fiscal:	Yes
Consultant:	Erin Riches		

SUBJECT: Planning and zoning: housing

DIGEST: This bill makes various changes to SB 35 (Wiener, Chapter 366, Statutes of 2017), which established a streamlined process for approving local housing developments that meet specified standards, and to AB 932 (Ting, Chapter 786, Statutes of 2017), which amended the Shelter Crisis Act to authorize emergency housing, upon declaration of a shelter crisis by specified cities and counties, to include homeless shelters.

ANALYSIS:

Existing law (SB 35, Wiener, Chapter 366, Statutes of 2017):

- 1) Allows a development proponent to submit an application for a development that is subject to a streamlined, ministerial approval process, and not subject to a conditional use permit, provided that:
 - a) The development contains two or more residential units and satisfies specified objective planning standards, including being located on an urban infill site that is zoned for residential or residential mixed-use, with at least two-thirds of the square footage designated for residential use.
 - b) If the development includes units that are subsidized, the development proponent must record a long-term affordability covenant on the units, as specified.
 - c) The development is located in a jurisdiction that has been determined by the state Department of Housing and Community Development (HCD) to have issued insufficient building permits to meet its share of the regional housing need assessment (RHNA), and the development is subject to a requirement mandating a minimum percentage of below market rate housing, as specified.

- d) The development proponent has certified to the locality that either the entirety of the development is a public work, or that all construction workers employed by the project will be paid at least prevailing wage, as specified. For specified developments, a skilled and trained workforce must be used.
- 2) Provides that if a local government determines that a development submitted pursuant to SB 35 is in conflict with any of the specified objective planning standards, it shall provide the development proponent written documentation as to the conflicts within a specified time period. If the locality fails to provide such documentation, the project shall be deemed to have satisfied the objective planning standards.
- 3) Provides that any design review or public oversight conducted by the local government's planning commission must be objective and strictly focused on assessing compliance with the criteria required for streamlined projects, as specified, and must be completed within specified timelines.
- 4) Prohibits a local government from imposing parking standards for a streamlined development that was approved in specified instances, such as when the development is located within one-half mile of transit.
- 5) Provides that these provisions shall sunset on January 1, 2026.

Existing law (AB 932, Ting, Chapter 786, Statutes of 2017):

- 6) Provides that upon declaration of a shelter crisis by the City of Berkeley, Emeryville, Los Angeles, Oakland, or San Diego, the County of Santa Clara, or the City and County of San Francisco, the following shall apply during the shelter crisis:
 - a) Emergency housing may include homeless shelters located or constructed on any land owned or leased by the locality.
 - b) The locality may adopt by ordinance, reasonable local standards and procedures for the design, site development, and operation of shelters to the extent it determines that state and local standards or laws would prevent, hinder, or delay the mitigation of the effects of the shelter crisis.
 - c) HCD must approve the draft ordinance within 30 days to ensure it addresses minimum health and safety standards.
- 7) Requires a locality to annually report specified data to the Legislature.

8) Requires the locality to develop a plan to address the shelter crisis, as specified.

This bill:

- 1) Clarifies that a development proponent must record an affordability restriction or covenant on housing units that are required to receive streamlining at affordable housing costs or rents for low-income individuals and families.
- 2) Clarifies that HCD must determine whether a jurisdiction is subject to streamlining based on the last annual progress report submitted by the jurisdiction.
- 3) Clarifies that HCD's determination of whether a jurisdiction is subject to streamlining is based on its issuance of building permits for either very-low and low-income households by income category.
- 4) Provides that if a development that qualifies for streamlining requires an approval under the Subdivision Map Act, the approval shall be objective and strictly focused on assessing compliance with criteria required for streamlined projects.
- 5) Clarifies that parking standards imposed by local governments on developments that qualify for streamlining, pertain to automobile parking.
- 6) Provides that the California Environmental Quality Act (CEQA) does not apply to actions taken by a state or local government agency to lease, convey, or encumber land owned by the local government, to facilitate the lease conveyance or encumbrance of land owned by the local government for housing for very-low, low-, or moderate income households.
- 7) Provides that an application for a development that is subject to SB 35 is not a "project" as defined in CEQA.
- 8) States legislative intent that it is the policy of the state that SB 35 be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and approval and provision of, increased housing supply.
- 9) Provides that when the cities of Berkeley, Emeryville, Los Angeles, Oakland, or San Diego, the County of Santa Clara, or the City or County of San Francisco, declares a shelter crisis under the Shelter Crisis Act, CEQA does not apply to actions taken by a state agency or locality to lease, convey, or encumber land owned by the local government for a homeless shelter.

COMMENTS

- 1) *Purpose.* The author states that the negative impacts of California's housing shortage threaten our state's economic growth, environmental well-being, and diversity. But too many communities either ignore their housing goals or set up processes designed to impede housing creation. SB 35 of 2017 created a new, streamlined approval process for qualifying housing developments in communities with an identified housing shortage. The author states that since SB 35 took effect on January 1st, issues have arisen indicating that certain clarifications are needed to ensure that the intent of the bill is fully implemented.
- 2) *SB 35 background.* Last year, SB 35 established a streamlined approval process for infill projects, with two or more residential units, in localities that have failed to produce sufficient housing to meet their RHNA numbers. This process requires some level of affordable housing to be included in the project. To receive the streamlined process, a developer must demonstrate that the development meets a number of requirements. Localities must provide written documentation to the developer, within a specified timeline, if there is a failure to meet the specifications for a streamlined approval. If the locality does not meet those deadlines, the development shall be deemed to satisfy the requirements for the streamlined approval. Developers have submitted applications for SB 35 streamlining in Cupertino, Berkeley, and San Francisco.
- 3) *Amendments to SB 35.* This bill includes a number of clarifications and changes to SB 35 statute, including:
 - a) *Long-term affordability.* SB 35 requires a developer, in order to qualify for SB 35 streamlining, to dedicate a percentage of units for lower-income households, either 10% or 50%. This bill clarifies that a developer is required to record affordability covenants of 55 years for rental units and 45 years for ownership units included in the development.
 - b) *HCD determination.* SB 35 requires HCD to determine whether a local government is subject to streamlining based on its annual progress report (APR), which details the number of building permits the jurisdiction issued in the past year. However, existing law references the prior two APRs in one section, and the latest APR in another section. This bill clarifies that HCD's determination shall be based on the jurisdiction's latest APR.

SB 35 provides that a jurisdiction is subject to streamlining if its APR indicates there were fewer permits issued for units of housing affordable to households below 80% of area median income than were required by the RHNA. This bill clarifies that the determination is based on permits for units affordable to either very-low income, or low-income, households.

- c) *Subdivision Map Act*. SB 35 prohibits developments that were or are subject to a subdivision under the Subdivision Map Act (SMA), unless the development is either receiving low-income housing tax credits and pays prevailing wage, or the development is subject to both prevailing wage and skilled and trained workforce is used. This bill provides that where the SMA has objective standards, the local government must apply those objective subdivision standards, and states that this change is declaratory of existing law.
 - d) *CEQA streamlining*. CEQA requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. Most development proposals are subject to CEQA and every development project that requires a discretionary governmental approval requires at least some environmental review pursuant to CEQA, unless an exemption applies. In keeping with the streamlined, ministerial process established under SB 35, this bill exempts from CEQA the lease, conveyance, or encumbrance of land owned by the state or local jurisdiction for housing for very-low, low-, or moderate income households. It also provides that an application for an SB 35 development is not a “project” as defined in CEQA and therefore shall not trigger a CEQA review.
- 4) *Amendment to Shelter Crisis Act*. The Shelter Crisis Act allows a local jurisdiction to declare a shelter crisis with limited liability in order to provide emergency housing. It also allows the jurisdiction to permit homeless individuals to occupy designated public facilities for the duration of the crisis, and suspends local housing, health, and safety standards for public facilities as specified. AB 932 of 2017 amended the Shelter Crisis Act to authorize emergency housing, upon declaration of a shelter crisis by Berkeley, Emeryville, Los Angeles (city), Oakland, San Diego (city), Santa Clara (county), or San Francisco, to include homeless shelters. This bill provides that when one of these localities declares a shelter crisis, actions taken by a state or local government agency to lease, convey, or encumber land owned by the locality for a homeless shelter are exempt from CEQA. This provision is intended to help these jurisdictions site emergency housing and shelters on city- or county-owned land.

- 5) *Late amendments.* This bill was subject to extensive negotiations and did not go into print in its final form until this week, so current support and opposition is unknown except as listed.

- 6) *Senate Rule 29.10(c) referral.* When this bill was passed by the Senate earlier this year, it related to charter school properties. It was subsequently amended to address SB 35 cleanup issues. Because it was substantially amended in the Assembly, the Senate Rules Committee referred the amended bill, pursuant to Senate Rule 29.10(c), to the Transportation and Housing Committee to consider the new amendments.

RELATED LEGISLATION:

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.

AB 932 (Ting, Chapter 786, Statutes of 2017) – authorized emergency housing, upon declaration of a shelter crisis by the City of Berkeley, Emeryville, Los Angeles, Oakland, or San Diego, the County of Santa Clara, or the City and County of San Francisco, to include homeless shelters until January 1, 2021.

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

POSITIONS: (Communicated to the committee before noon on Thursday, August 30th.)

SUPPORT:

Los Angeles Mayor Eric Garcetti

OPPOSITION:

None received.

ARGUMENTS IN SUPPORT: Los Angeles Mayor Eric Garcetti states that this bill will allow the city to more effectively tackle its homelessness crisis.