SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No:	SB 290	**Hearing Date:**	3/18/2021
Author:	Skinner		
Version:	2/1/2021		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Erin Riches		

SUBJECT: Density Bonus Law: qualifications for incentives or concessions: student housing for lower income students: moderate-income persons and families: local government constraints

DIGEST: This bill makes various changes to Density Bonus Law (DBL), including providing additional benefits to housing developments that include low-income rental and for-sale housing units, and moderate-income for-sale housing units.

ANALYSIS:

Existing law:

1) Requires each city and county to submit an annual progress report (APR), annually by April 1, to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes data points and updates on housing plans and approvals.

2) Requires each city and county to adopt an ordinance that specifies how it will implement state DBL. 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 CID for moderate-income households;

e) 10% of the total units for transitional foster youth, disabled veterans, or homeless persons; or

f) 20% of the total units for lower-income students in a student housing development.

g) 100% of the units of a housing development for lower-income households, except that 20% of units may be for moderate-income households.

3) Requires a city or county to allow an increase in density on a sliding scale from 20% to 50%, depending on the percentage of units affordable to low- and very low-income households, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. Requires the increase in density on a sliding scale for moderate-income for-sale developments from 5% to 50% over the otherwise allowable residential density.

4) Provides that upon the request of a developer, a city or county shall not require a vehicular parking ratio, inclusive of disabled and guest parking, that meets the following ratios:

a) Zero to one bedroom — one onsite parking space.

b) Two to three bedrooms — one and one-half onsite parking spaces.

c) Four and more bedrooms — two and one-half parking spaces.

5) Notwithstanding (4) above, provides that a city or county shall not impose a parking ratio higher than 0.5 spaces per unit, nor any parking standards, for a project that is:

a) Located within one-half mile of a major transit stop and the residents have unobstructed access to the transit stop; or

b) A for-rent housing development for individuals who are 62 years or older and the residents have either access to paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

6) Notwithstanding (4) and (5) above, provides that a city or county shall not impose any minimum parking requirement on a housing development that consists solely of rental units for lower income families and the is either a special needs or a supportive housing development.

7) Provides that the applicant shall receive the following number of incentives or concessions:

   a) One incentive or concession for projects that include at least 10% of the total units for moderate-income households, 10% of the total units for lower-income households, or at least 5% for very low-income households.

   b) Two incentives or concessions for projects that include at least 20% of the total units for moderate-income households, 17% of the total units for lower income households, or least 10% for very low income households.

   c) Three incentives or concessions for projects that include at least 30% of the total units for moderate-income households 24% of the total units for lower-income households, or at least 15% for very low-income households.

   d) Four incentives or concessions for projects where 100% of the units of a housing development for lower-income households, except that 20% of units may be for moderate-income households, as well as a height increase up to 33 feet if the project is located within one-half mile of a transit stop.

7) Limits the applicability of DBL for moderate-income developments to for-sale units in a CID.

8) Defines "housing development" as development project for five or more residential units.

This bill:

1) Requires a city or county to report in the housing element APR, the number of units for lower income students that were included in a student housing development for which a developer received a density bonus.

2) Makes a student housing development containing at least 20% of the units for lower-income students, as defined, eligible for one incentive or concession.

3) Expands the types of for-sale moderate- and low-income housing units that can benefit from a density bonus by deleting the existing law requirement that the units be in a "common interest development."

4) Allows moderate-income housing developments that include 40% moderate income for-sale housing, and are within in one-half mile of a major transit stop, to receive a parking reduction of 0.5 parking spaces per bedroom.

5) Defines "total units" or "total dwelling units" as the calculation of the number of units that:

   a) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus; and

   b) Includes a unit designated to satisfy an inclusionary zoning requirement of a local agency.

COMMENTS

1) *Author's statement*. "The State Density Bonus Law is a unique tool that incentivizes developers to build more affordable housing in California. However, flaws in the program result in many cites underutilizing the density bonus tool or not using it at all. SB 290 improves and clarifies the density bonus statute to expand its use in California to increase affordable housing production."

2) *Density Bonus Law*. Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. DBL allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance, in exchange for affordable units. Allowing more total units permits the developer to spread the cost of the affordable units more broadly over the market-rate units. The idea of DBL is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy.

   Under existing law, if a developer proposes to construct a housing development with a specified percentage of affordable units, the city or county must provide all of the following benefits: a density bonus; incentives or concessions (hereafter referred to as incentives); waiver of any development standards that prevent the developer from utilizing the density bonus or incentives; and reduced parking standards.

   To qualify for benefits under DBL, a proposed housing development must contain a minimum percentage of affordable housing (see #2 under "Existing

Law"). If one of these options is met, a developer is entitled to a base increase in density for the project as a whole (referred to as a density bonus) and one regulatory incentive. Under DBL, a developer is entitled to a sliding scale of density bonuses, up to a maximum of 50% of the maximum zoning density and up to four incentives, as specified, depending on the percentage of affordable housing included in the project. At the low end, a developer receives 20% additional density for 5% very low-income units and 20% density for 10% low-income units. The maximum additional density permitted is 50%, in exchange for 15% very low-income units and 24% low-income units. The developer also negotiates additional incentives, reduced parking, and design standard waivers, with the local government. This helps developers reduce costs while enabling a local government to determine what changes make the most sense for that site and community.

3) *Need for Moderate Income Housing*. In October 2019, the California Housing Partnership Corporation (CHPC) published a report that compared the median asking rent data on Craigslist for two-bedroom apartments with regionally adjusted 2019 area median incomes. The report found that very low-income households earning 50% of area median income (AMI) can afford modest rents in only one county in California; households earning 60% AMI could afford modest rents in 11 counties; 80% AMI could afford modest rents in 29 counties; and households earning 100% AMI (*e.g.* at median income level) could afford modest rents in all but six counties, primarily in the State's high-cost coastal regions.

Generally, when low-income households experience severe cost burden and spend most of their income on housing, families have to cut back on essentials such as food, healthcare, childcare, and transportation. These families are often at serious risk of becoming homeless. While CHPC recommends prioritizing assistance to households with the lowest income, they note that there are moderate income households in specific neighborhoods and counties that also need help. CHPC recommends assistance for households earning more than 80% AMI generally be limited to areas of the State where median income households cannot afford modest rents, particularly in the six higher cost coastal counties.

This bill seeks to incentivize the development of more moderate- and low-income households without any additional public funding, by expanding types of for-sale moderate- and low-income housing units that can benefit from a density bonus. This is achieved by deleting the existing law requirement that the units be in a "common interest development."

4) *Incentives for student housing.* Existing law (SB 1227 of 2018) requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units agrees to construct a student housing development that will set aside at least 20% of the total units for lower-income students, as specified. This bill seeks to further incentive housing for lower-income students by additionally making such a development eligible for one incentive or concession.

5) *Opposition arguments.* Existing law authorizes a city or county to refuse to grant an incentive requested by a developer if the city or county makes written findings that the incentive would have a specific, adverse impact on health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources. The Pacific Palisades Community Council objects to this bill removing "physical environment" from this provision; the author notes that removing it provides better alignment between density bonus law and the Housing Accountability Act. Other opponents state that this bill would reward developers who erect huge housing complexes with predominantly market rate and luxury units; worsen DBL by creating competition between low income and moderate income renters; and usurps local control.

6) *SB 1085 redux.* This bill is virtually identical to SB 1085 of 2020.

7) *Double referral.* This bill has also been referred to the Governance & Finance Committee.

RELATED LEGISLATION:

SB 1085 (Skinner, 2020) — would have made various changes to DBL, including providing additional benefits to housing developments that include moderate-income rental housing units. *This bill died on the Senate Floor.*

AB 2345 (L. Gonzalez, Chapter 197, Statutes of 2020) — amended density bonus law to increase base density for housing developments that provide specified percentages of very low-, low-, and moderate-income housing units.

SB 1227 (Skinner, Chapter 937, Statutes of 2018) — required 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 20% of the total units for lower-income students in a student housing development, as specified.

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

POSITIONS: (Communicated to the committee before noon on Friday, March 12, 2021.)

SUPPORT:

American Planning Association, California Chapter
Bridge Housing Corporation
California Association of Realtors
California Building Industry Association
California YIMBY
Circulate San Diego
Council of Infill Builders
Generation Housing
Habitat for Humanity California
Habitat for Humanity Greater San Francisco
Housing Action Coalition
Non-profit Housing Association of Northern California (NPH)
San Francisco Bay Area Planning and Urban Research Association (SPUR)
Sand Hill Property Company
Silicon Valley Community Foundation
South Pasadena Residents for Responsible Growth
Silicon Valley @ Home
Terner Center for Housing Innovation At the University of California, Berkeley
The Two Hundred
TMG Partners

OPPOSITION:

California Cities for Local Control
Catalysts
Livable California
Pacific Palisades Community Council
Sustainable Tamalmonte
2 Individuals

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