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

Bill No:	AB 634	**Hearing Date:**	6/17/2021
Author:	Carrillo		
Version:	4/20/2021		
Urgency:	No	**Fiscal:**	No
Consultant:	Alison Hughes		

SUBJECT: Density Bonus Law

DIGEST: This bill allows a local government to require an affordability period longer than 55 years for units that qualify a developer for a density bonus, if the local government has an inclusionary housing ordinance that requires a percentage of residential units affordable to lower-income households for longer than 55 years.

ANALYSIS:

Existing law:

1) Requires all cities and counties to adopt an ordinance that specifies how they 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 common interest development for moderate-income households;

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

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

2) Requires the 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.

3) Provides that the applicant shall receive a specified number of incentives or concessions depending on the percentage of units affordable to very low-, low-, and moderate income households.

4) Requires an applicant for a density bonus to agree to the continued affordability of all very low- and low-income units for 55 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage issuance program, or rental subsidy program. Rents shall be set at an affordable rent.

5) Provides that, if permitted by a local ordinance, nothing shall be construed to prohibit a city, county or city and county from granting a density bonus greater than what is described in density bonus law for a development that meets the existing statutory requirements.

This bill:

1) Provides that, if permitted by a local ordinance, nothing shall be construed to prohibit a city or county from requiring an affordability period longer than 55 years for any units that qualify the applicant for a density bonus developed in compliance with a local inclusionary ordinance that requires that the development include a certain percentage of units for lower income households, as specified, and that will be financed without low-income housing tax credits.

COMMENTS:

1) *Author's statement. "*In order to ensure longer-term affordability on new housing developments, AB 634 will allow local governments to extend the affordability term for future units created under both local and state housing programs beyond 55 years. This bill will harmonize provisions between the State programs and local inclusionary housing ordinances and add a critical tool

to help local governments address the shortage of affordable housing in California."

2) *Density Bonus Law (DBL).* 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. If one of these six 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 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% additional density for moderate-income units. The maximum additional density permitted is 50% (in exchange for 15% very low-income units, 24% low-income units, and 44% moderate-income units). 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.

3) *Inclusionary ordinances*. Local governments adopt inclusionary housing ordinances that require a developer to include a percentage of affordable housing on site, pay an in lieu fee to fund affordable housing elsewhere in the community, or dedicate land for affordable housing construction. DBL requires a developer to record 55-year covenants on the affordable housing units that

qualify it for the density bonus. In some cases, local governments' inclusionary housing ordinances require affordability covenants that exceed 55 years.

This bill would allow a local government to require the units that qualify a developer for the award of the density bonus to be affordable for a period longer than 55 years if the local government has adopted an inclusionary ordinance requiring affordability covenants that exceed 55 years. This bill only allows these ordinances to apply to units that are not financed with LIHTC.

4) *Opposition.* According to the Community Catalysts Preserving Local Control, this bill presents "another example of state over-reach into what local elected officials could do themselves" and that it "is a deep dive into the weeds of micro-management and bureaucracy."

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

POSITIONS: (Communicated to the committee before noon on Wednesday, June 11, 2021.)

SUPPORT:

County of Los Angeles (Sponsor)

OPPOSITION:

Community Catalysts Preserving Local Control

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