ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area

ABAG

CALL AND NOTICE

CALL AND NOTICE OF A SPECIAL MEETING OF THE LEGISLATION AND GOVERNMENTAL ORGANIZATION COMMITTEE OF THE ASSOCIATION OF BAY AREA GOVERNMENTS

As Chair of the Legislation and Governmental Organization Committee of the Association of Bay Area Governments (ABAG), I am calling a special meeting of the ABAG Legislation and Governmental Organization Committee as follows:

Special Meeting

Thursday, April 20, 2017, 3:30 p.m. to 5:00 p.m.

Location

Bay Area Metro Center
Board Room
375 Beale Street
San Francisco, California

Committee Members

Scott Haggerty, Supervisor, County of Alameda—*Chair*
Dave Hudson, Vice Mayor, City of San Ramon
Karen Mitchoff, Supervisor, County of Contra Costa
Harry Price, Mayor, City of Fairfield
Greg Scharff, Mayor, City of Palo Alto
David Cortese, Supervisor, County of Santa Clara—*Ex officio*
Julie Pierce, Councilmember, City of Clayton—*Ex officio*
David Rabbitt, Supervisor, County of Sonoma—*Ex officio*

The ABAG Legislation and Governmental Organization Committee may act on any item on this agenda.

Agenda and attachments and webcast available at abag.ca.gov

For information, contact Fred Castro, Clerk of the Board, at (415) 820 7913.

1. **CALL TO ORDER / ROLL CALL / CONFIRM QUORUM**
2. **PUBLIC COMMENT**

   INFORMATION

3. COMMITTEE ANNOUNCEMENTS

INFORMATION

4. APPROVAL OF ABAG LEGISLATION AND GOVERNMENTAL ORGANIZATION COMMITTEE SUMMARY MINUTES OF MEETING ON MARCH 16, 2017

ACTION

5. REPORT ON LEGISLATION

ACTION

6. REPORT ON LEGISLATIVE WORKSHOP AND RECEPTION ON MARCH 22, 2017

INFORMATION

7. ADJOURNMENT

The next meeting of the ABAG Legislation and Governmental Organization Committee is on May 18, 2017.

Members of the public shall be provided an opportunity to directly address the ABAG Legislation and Governmental Organization Committee concerning any item described in this notice before consideration of that item.

Agendas and materials will be posted and distributed for this meeting by ABAG staff in the normal course of business.

Submitted:

/s/ Scott Haggerty
Chair, Legislation and Governmental Organization Committee

Date Submitted: April 18, 2017

Date Posted: April 18, 2017

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area

ABAG

AGENDA

LEGISLATION AND GOVERNMENTAL ORGANIZATION COMMITTEE

Special Meeting

Thursday, April 20, 2017, 3:30 p.m. to 5:00 p.m.

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375 Beale Street
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Committee Members

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1. **CALL TO ORDER / ROLL CALL / CONFIRM QUORUM**
2. **PUBLIC COMMENT**

   INFORMATION
3. **COMMITTEE ANNOUNCEMENTS**

   INFORMATION

4. APPROVAL OF ABAG LEGISLATION AND GOVERNMENTAL ORGANIZATION COMMITTEE SUMMARY MINUTES OF MEETING ON MARCH 16, 2017

ACTION

Attachment: Summary Minutes of March 16, 2017

5. REPORT ON LEGISLATION

ACTION

Brad Paul, ABAG Acting Executive Director, will report on shared staff resources and the following legislation:

AB 71 (Chiu) Taxes: credits: Low-income housing: allocation increase.

AB 73 (Chiu) Planning and zoning: housing sustainability districts.

SB 2 (Atkins) Building Homes and Jobs Act.

SB 3 (Beall) Affordable Housing Bond Act of 2018.

SB 35 (Wiener) Planning and Zoning: affordable housing: streamlined approval process.

AB 1423 (Chiu) Housing data.

SB 564 (McGuire) Joint powers authorities: Water Bill Savings Act.

AB 59 (Thurmond) Local Housing Trust Fund Matching Grant Program.

AB 358 (Grayson) Regional economic development areas.

AB 890 (Medina) Local land use initiatives: environmental review.

AB 1397 (Low) Local Housing element: inventory for residential development.

Attachments: Legislation Summary; Bill Text Letters

6. REPORT ON LEGISLATIVE WORKSHOP AND RECEPTION ON MARCH 22, 2017

INFORMATION

7. ADJOURNMENT

The next meeting of the ABAG Legislation and Governmental Organization Committee will be on May 18, 2017.

Submitted:

/s/ Brad Paul, Acting Executive Director

Date Submitted: April 18, 2017

Date Posted: April 19, 2017

SUMMARY MINUTES

ABAG Legislation and Governmental Organization Committee Meeting
Thursday, March 16, 2017
Bay Area Metro Center

1. CALL TO ORDER / ROLL CALL / CONFIRM QUORUM

ABAG Legislation and Governmental Organization Committee Chair Scott Haggerty, Supervisor, Alameda County, called the meeting of the Legislation and Governmental Organization Committee of the Association of Bay Area Governments to order.

A quorum of the Committee was present.

Members Present:

Chair, Supervisor Scott Haggerty, Alameda County
Supervisor David Cortese, County of Santa Clara
Councilmember Julie Pierce, ABAG President, City of Clayton
Vice Mayor Dave Hudson, City of San Ramon
Supervisor Karen Mitchoff, Contra Costa County
Mayor Greg Scharff, City of Palo Alto
ABAG Staff:
Brad Paul, Acting Executive Director
Halimah Anderson, Communications Officer
Duane Bay, Assistant Planning and Research Director
Ada Chan, Regional Planner
Jerry Lahr, Energy Programs Manager
Fred Castro, Executive Assistant/Clerk of the Board
MTC Staff:
Rebecca Long, Government Relations Manager
Georgia Gann Dohrmann, Assistant Government Relations Manager

2. Approval of Minutes from January 19, 2017 Meeting.

Supervisor Karen Mitchoff made a motion to approve the minutes. The motion was seconded by Councilmember Julie Pierce. The meeting minutes were approved (6-0).

3. Duane Bay, ABAG Assistant Planning and Research Director and Ada Chan, ABAG Regional Planner

Duane and Ada provided an overview of eight housing bills, along with staff recommendations.

- Following the staff report and recommendations, the committee voted to take a *watch* position on three pieces of legislation authored by Assemblymember Chiu -- AB 71, AB 73, and AB 74.
- The committee voted to take a position of *watch and seek amendment* on AB 1423 (Chiu).
- Duane noted that AB 1423 is a spot bill and the language is still very conceptual. The amendments that staff are seeking are to assure that the bill reflects technical language that ABAG has requested, such as having to report actual parcel numbers for housing produced, so that we can do GIS analysis, not just area totals.
- In addition, the committee took a *watch* position on SB 2 (Atkins) and a *support* position on SB 3 (Beall). The Committee took a watch position on SB 540 (Roth) and SB 35 (Wiener).

Councilmember Pierce made a motion regarding the positions listed above and the motion was seconded by Mayor Scharff. The committee approved the motion (6-0).

4. Jerry Lahr, ABAG Energy Programs Manager

Jerry noted that we are recommending support for SB 564 (McGuire). This bill directly supports our BayREN program, which strives for energy efficiency. This is a reintroduction of a bill that we supported last year.

Following the staff report, Vice Mayor Hudson made a motion to support SB 564 and the motion was seconded by Supervisor Haggerty.

5. Brad Paul, ABAG Acting Executive Director

Brad provided an overview on 15 pieces of other legislation that ABAG is currently monitoring, including AB 18 (Garcia) and SB 435 (Dodd).

Following the presentation, the committee took a support position on AB 18 and a watch position on all of the other bills presented in this item.

6. Rebecca Long, MTC Government Relations Manager

Rebecca noted that ABAG and MTC are developing principles that expand on advocacy campaign program. Rebecca noted that staff would like to bring draft housing principles before the Regional Planning Committee's housing subcommittee and then present them to the ABAG L&GO Committee in May and to the MTC Legislation Committee for adoption.

The principles would help give us a basis on which to advocate.

7. Legislative Workshop and Reception

Councilmember Pierce noted that the Legislative Workshop and Reception will be held on Wednesday, March 22, 2017.

ABAG

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area

Bay Area Metro Center
375 Beale Street, Suite 700
San Francisco, CA 94105
(415) 820-7986
Website: www.abag.ca.gov/meetings

LEGISLATION SUMMARY
2017 State Legislative Session
Legislation & Governmental Organization Committee
April 20, 2017

Bill Number	Current Text	Status	Summary	ABAG Recom.	Positions: League CSAC MTC	L&GO Position
AB 71 (Chiu)	Amended 3/2	Re-referred to Assembly Committee on Revenue and Taxation 3/8	**Taxes: credits: Low-income housing: allocation increase.** Income taxes: credits: low-income housing: farmworker housing. Would, under the law governing the taxation of insurers, the Personal Income Tax Law, and the Corporation Tax Law, for calendar years beginning in 2018, increase the aggregate housing credit dollar amount that may be allocated among low-income housing projects to $300,000,000, as specified, and would allocate to farmworker housing projects $25,000,000 per year of that amount. The bill would delete that special needs exception and authorization to request state credits provided the applicant is not requesting a 130% basis adjustment for purposes of the federal credit amount.	**Watch**	**League** = watch **CSAC** = watch **MTC**= support	**Watch**
AB 73 (Chiu)	Amended 3/28	Re-referred to Assembly Committee on Natural Resources 4/6	**Planning and zoning: housing sustainability districts.** Would authorize a city, county, or city and county, including a charter city, charter county, or charter city and county, to establish by ordinance a housing sustainability district that meets specified requirements, including authorizing residential use within the district through the ministerial issuance of a permit. The bill would authorize the city, county, or city and county to apply to the Office of Planning and Research for approval for a zoning incentive payment and require the city, county, or city and county to provide specified information about the proposed housing sustainability district ordinance.	**Watch**	**League** = no position **CSAC** = pending **MTC** = tracking	**Watch**
SB 2 (Atkins)	Amended 3/23	Senate Appr. suspense file 4/3	**Building Homes and Jobs Act.** Would enact the Building Homes and Jobs Act. The bill would make legislative findings and declarations relating to the need for establishing permanent, ongoing sources of funding dedicated to affordable housing development. The bill would impose a fee, except as provided, of $75 to be paid at the time of the recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, per each single transaction per single parcel of real property, not to exceed $225.	**Watch**	**League** = support **CSAC** = support **MTC** = support	**Watch**
SB 3 (Beall)	Amended 3/28	Senate Appr. suspense file 4/3	**Affordable Housing Bond Act of 2018.** Would enact the Affordable Housing Bond Act of 2018, which, if adopted, would authorize the issuance of bonds in the amount of $3,000,000,000 pursuant to the State General Obligation Bond Law. Proceeds from the sale of these bonds would be used to finance various existing housing programs, as well as infill infrastructure financing and affordable housing matching grant programs, as provided.	**Support**	**League=** Support **CSAC =** **MTC=** support	**Support**

Bill Number	Current Text	Status	Summary	ABAG Recom.	Positions: League CSAC MTC	L&GO Position
SB 35 (Wiener)	Amended 4/4	Senate Gov. and Fin.	**Planning and Zoning: affordable housing: streamlined approval process.** The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. The Planning and Zoning Law requires a planning agency, after a legislative body has adopted all or part of a general plan, to provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the general plan and progress in meeting the community's share of regional housing needs. This bill would require the planning agency to include in its annual report specified information regarding units of housing that have completed construction. The bill would also require the Department of Housing and Community Development to post an annual report submitted pursuant to the requirement described above on its Internet Web site, as provided.	**Watch**	**League =** oppose **CSAC =** oppose unless amended **MTC=** tracking	**Watch**
AB 1423 (Chiu)	Amended 3/28	Assembly Local Government 3/29	**Housing data.** The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing. This bill would declare the intent of the Legislature to enact legislation that would fund measures to provide for accessible housing-related data and would make legislative findings and declarations in support of that intent.	**Watch**	**League=** watch **CSAC =** watch **MTC =** tracking	**Watch and Seek Amend.**
SB 564 (McGuire)	Amended 4/18	Senate third Committee Reading 4/18	**Joint powers authorities: Water Bill Savings Act.** Existing law, the Marks-Roos Local Bond Pooling Act of 1985, authorizes joint powers authorities, among other powers, to issue bonds and loan the proceeds to local agencies to finance specified types of projects and programs. This bill would enact the Water Bill Savings Act, which would authorize a joint powers authority to provide funding for a customer of a local agency or its publicly owned utility to acquire, install, or repair a water efficiency improvement on the customer's property served by the local agency or its publicly owned utility. The bill would require the customer to repay the authority through an efficiency charge on the customer's water bill to be established and collected by the local agency or its publicly owned utility on behalf of the authority pursuant to a servicing agreement. The bill would authorize the authority to issue bonds to fund the program. The bill would require an efficiency improvement to comply with certain provisions of the CalConserve Water Use Efficiency Revolving Loan Program.	**Support**	**League =** watch **CSAC =** pending **MTC =** no position	**Support**
AB 59 (Thurmond)	Introduced 12/07	Referred to Assembly Committee on Housing and Community Dev. 1/19	**Local Housing Trust Fund Matching Grant Program.** This bill would recast these provisions to instead authorize the department to make grants to eligible recipients, defined as cities that meet specified criteria and charitable nonprofit organizations organized under certain provisions of the Internal Revenue Code that apply jointly with a qualifying city, that have created or are operating or will operate housing trust funds. The bill would increase the maximum allocation for an eligible recipient to $5,000,000. The bill would also provide that an eligible recipient would not be required to provide matching funds if the eligible recipient is suffering a hardship, as determined by the Department of Finance.	**Watch**	**League =** watch **CSAC =** watch **MTC=** tracking	**Watch**

Bill Number	Current Text	Status	Summary	ABAG Recom.	Positions: League CSAC MTC	L&GO Position
AB 358 (Grayson)	Amended 3/30	Assembly Com. Jobs, Economic Dev. & the Economy 3/30	**Regional economic development areas.** The Military Base Reuse Authority Act authorizes counties and cities located wholly or partly within the boundaries of a military base to establish a military base reuse authority to prepare, adopt, finance, and implement a plan for the future use and development of the territory occupied by the military base. This bill would create the Regional Economic Development Area Act, which would authorize a city, county, or city and county to designate an area within the city, county, or city and county that includes an active or inactive military base and up to ___ square miles surrounding the military base as a regional economic development area, and submit that area to the Governor's Office of Business and Economic Development for certification. The bill would provide that a regional economic development area certified pursuant to these provisions would receive priority for any grant of funds from a state agency for projects within that regional economic development area. The bill would require the Governor's Office of Business and Economic Development to adopt regulations for the implementation of these provisions.	**Watch**	**League =** watch **CSAC =** pending **MTC=** no position	**Watch**
AB 890 (Medina)	Amended 4/18	Referred to Assembly to Committee on Envir. And Natural Resources 3/2	**Local land use initiatives: environmental review.** The California Constitution authorizes the electors of each city and county to exercise the powers of initiative and referendum under procedures provided by the Legislature. Pursuant to that authority, existing law authorizes a proposed ordinance to be submitted to the appropriate elections official and requires the elections official to forward the proposed ordinance to appropriate counsel for preparation of a ballot title and summary. This bill would require a proponent of a proposed initiative ordinance, at the time he or she files a copy of the proposed initiative ordinance for preparation of a ballot title and summary with the appropriate elections official, to also request that an environmental review of the proposed initiative ordinance be conducted by the appropriate planning department, as specified. The bill would require the elections official to notify the proponent of the result of the environmental review. The bill would require the county board of supervisors, legislative body of a city, or governing board of a district, if the initiative ordinance proposes an activity that may have a significant effect on the environment, as specified, to order that an environmental impact report or mitigated negative declaration of the proposed ordinance be prepared. Once the environmental impact report or mitigated negative declaration has been prepared, the bill would require the governing body to hold a public hearing and either approve or deny the proposed ordinance, instead of allowing the proposed ordinance to be submitted to the voters. This bill contains other related provisions and other existing laws.	**Watch**	**League =** oppose **CSAC =** oppose **MTC =** no position	**Watch**
AB 1397 (Low)	Introduced 2/17	Pending re-refer to Assembly Committee on Local Gov. 4/17	**Local planning: housing element: inventory for land for residential development.** Would revise the inventory of land suitable for residential development to include vacant sites and sites that have realistic and demonstrated potential for redevelopment to meet a portion of the locality's housing need for a designated income level. By imposing new duties upon local agencies with respect to the housing element of the general plan, this bill would impose a state-mandated local program.	**Watch**	**League=** oppose **CSAC=** oppose **MTC=** tracking	**Watch**

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ASSEMBLY BILL 71 (CHIU)
BRING CALIFORNIA HOME ACT

SUMMARY

This bill provides an ongoing state funding source for affordable housing by eliminating the state mortgage interest deduction on vacation homes. This deduction results in a revenue loss to the state of approximately $300 million annually. The funds saved as a result of eliminating the deduction would then increase the Low Income Housing Tax Credit (LIHTC) program by $300 million per year. Californians could continue to claim a mortgage interest deduction for a vacation home on their federal taxes.

BACKGROUND

The largest investment the state makes in housing is through the mortgage interest deduction; a deduction that disproportionately benefits those with higher incomes and larger mortgages. In 2012, 77 percent of the benefits of the federal mortgage interest deduction went to homeowners with incomes above $100,000. According to the Franchise Tax Board, approximately four million Californians claim the deduction resulting in over $5 billion in revenue loss to the state every year.

In addition to the deduction taxpayers can take on their primary home, they can also deduct interest paid on a vacation home. The estimated impact of the vacation home mortgage interest deduction on the General Fund averages $300 million every year. Approximately 195,000 Californians claim a mortgage interest deduction on a second, vacation home.

The Low-Income Housing Tax Credit Program (LIHTC) was enacted by Congress in 1986 is one of the only remaining sources of funding available for affordable housing. The LIHTC program provides the market with an incentive to invest in more affordable housing through federal tax credits. The California Tax Credit Allocation Committee was directed to award these credits to developers of qualified projects in the state. Developers sell these credits to investors to raise capital for their projects, reducing the debt that the developer would otherwise have to borrow. As a result, property owners are able to offer lower, more affordable pricing.

In response to the high cost of developing housing in California, in 1987 the Legislature authorized a state low-income housing tax credit program. Existing law limits the total amount of low-income housing tax credits the state may allocate at $70 million per year. However, due to increased demand for housing development, the tax credit program has been oversubscribed – in 2014 only 49 percent of applicants were awarded credits – leaving many high quality developments without a secure source of funding.

In addition, there is an untapped federal low-income housing tax credit that the state can still access—the 4% Federal Tax Credit. These 4% federal credits are unlimited and remain unused by the state. This is largely due to the fact that the 4% credits require additional state resources to make the development viable – additional state LIHTC funds will allow the state to tap into these resources.

THE PROBLEM

Virtually no low-income Californians, who make up 38 percent of the state's population, can afford their local housing costs. Nearly 70 percent of low-income and very-low income households spend more than 50 percent of their income on housing costs.

State investment in affordable housing for lower income families has been drastically reduced in the last five years. Voter-approved bonds to fund construction of affordable housing have been exhausted; Proposition 46 of 2002 and Proposition 1C of 2006 together had provided $4.95 billion for affordable housing. Along with the elimination of redevelopment agencies, our state's funding of affordable housing has dropped by $1.7 billion each year.

THE SOLUTION

By eliminating the vacation home mortgage interest deduction and simultaneously increasing the annual state tax credit allocation amounts to $300 million, California could leverage $1 billion dollars in new federal resources and create more than 3,000 affordable homes each year for low-income Californians and 7,000 new jobs.

03/08/17

SUPPORT

California Housing Consortium (co-sponsor)
California Housing Partnership (co-sponsor)
Housing California (co-sponsor)
Abode Communities
Affirmed Housing
ACCE
California Alternative Payment Program Association
California Apartment Association
California Bicycle Coalition
California Coalition for Rural Housing
California Community Economic Development - Association
California Tax Reform Association
California Reinvestment Coalition
CCraig Consulting
Chinatown Community Development Center
Christian Church Homes
City of Oakland
Community Development Commission of Mendocino - County
Community Housing Partnership
Community Housing Opportunities Corporation
Council of Community Housing Organizations, San Francisco
Betty T. Yee, California State Controller
Downtown Women's Center
EAH Housing
East Bay Developmental Disabilities Legislative Coalition
East Bay Housing Organizations
Eden Housing
Family Care Network, Inc.
First Place for Youth
Fred Finch Youth Center
Fresno Housing Authority
Friends Committee on Legislation of California
Greenbelt Alliance
Grounded Solutions Network
Highridge Costa Companies
House Farm Workers!
Housing Authority of the County of Santa Barbara
Housing Choices Coalition
Housing Consortium of the East Bay
Housing Trust Fund, San Luis Obispo County
Housing Trust Silicon Valley
Innovative Housing Opportunities
John Stewart Company
LeadingAge California
LifeSteps
LINC Housing
Little Tokyo Service Center
Manzanita Services
Mercy Housing
MidPen
Move LA
Mutual Housing California
Napa Valley Community Housing
Non-Profit Housing Association of Northern California
Promise Energy
Public Advocates
Resources for Community Development
Rural Community Assistance Corporation
Sacramento Housing Alliance
San Diego Housing Federation
Satellite Affordable Housing Associates
Self-Help Enterprises
SFHDC
Skid Row Housing Trust
Small Business for Affordable Housing, Petaluma
Southern California Association of Nonprofit Housing
State Building and Construction Trades Council of California
SV@Home
The Kennedy Commission
The Pacific Companies
Tenderloin Neighborhood Development Corporation
Wakeland Housing and Development Corporation

OPPOSITION

California Association of Realtors
California Sportfishing League

FOR MORE INFORMATION

Lisa Engel
Office of Assemblymember David Chiu
Lisa.engel@asm.ca.gov

Date of Hearing: March 8, 2017

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
AB 71 (Chiu) – As Amended March 2, 2017

SUBJECT: Taxes: credits: low-income housing: allocation increase

SUMMARY: Eliminates the mortgage interest deduction on second homes, increases the state Low-Income Housing Tax Credit (LIHTC) Program by $300 million, and makes changes to the LIHTC. Specifically, **this bill**:

1) Eliminates mortgage interest paid on a qualified second home as a deduction taxpayers can take against their state income tax.

2) Beginning in 2018, and each year thereafter, increases the allocation of state LIHTC by an additional $300 million and adjusts that amount for inflation beginning in 2019.

3) Beginning in 2018, increase the amount of low-income housing tax credits set-aside for farmworker housing from $500,000 to $25 million.

4) Provides that any low-income housing tax credits set-aside for farmworker housing developments that go unused of the $25 million will be available for qualified non-farmworker housing projects.

5) Provides that a sponsor that receives an award of 9% federal LIHTC cannot receive an allocation from the additional $300 million of state LIHTC but shall remain eligible for the $70 million allocation available prior to 2017.

6) Provides a newly constructed or the rehabilitated portion of an existing low-income housing project that is not located in a Difficult to Develop Area (DDA) or a Qualified Census Tract (QCT) and receives federal 4% LIHTC is eligible for cumulative state LIHTC over four years of 50% of the qualified basis of the building.

7) Provides the acquisition portion of an existing low-income housing project that is not located in a DDA or a QCT and receives federal 4% LIHTC is eligible for state LIHTC over four years of 13% of the qualified basis of the building.

8) Allows the Tax Credit Allocation Committee (TCAC) to replace federal LIHTC with state LIHTC for a new or existing low-income housing project that is a located in a DDA or QCT and receives federal 4% LIHTC of up to 50% of the qualified basis of the building, provided that the total amount of credits does not exceed 130%.

9) Provides that a low-income housing project is eligible for a cumulative state LIHTC of 95% of the qualified basis of the building over four years of the eligible basis if it meets all of the following requirements:

   a) It is at least 15 years old;

   b) It is a single room occupancy (SRO), special needs housing building, is in a rural area, or serves households with very-low income or extremely low-income residents;

c) It is serving households of very low or extremely low-income provided that the average income at the time of admission is no more than 45% of the median gross income adjusted for household size; and

d) It would have insufficient state credits to qualify to complete substantial rehabilitation due to a low appraised value.

10) Adds the following definitions:

a) "Extremely low-income" has the same meaning as Health and Safety Code Section 50053.

b) "Rural area" means a rural area as defined in Health and Safety Code Section 50199.21.

c) "Special needs housing" has the same meaning as paragraph (4) of Subdivision (g) of Section 10325 of Title 4 of the California Code of Regulations.

d) "SRO" means single room occupancy.

e) "Very low-income" has the same meaning as in Health and Safety Code Section 50053.

11) Includes an urgency clause.

EXISTING LAW:

1) Federal Internal Revenue Service (IRS) law allows a taxpayer to deduct the mortgage interest paid on up to $1 million in mortgage debt on a "qualified residence."

2) Federal IRS law defines a "qualified residence" for purposes of a mortgage interest deduction as a house, condominium, cooperative, mobile home, house trailer, boat, or similar property that has sleeping, cooking, and toilet facilities.

3) Federal IRS law defines a "qualified residence" as:

a) A principal residence; or

b) A second residence that is either not rented out for any portion of the year or a second home that you use for a portion of the year. If a second residence is rented out for a portion of the year a taxpayer must use this home more than 14 days or more than 10% of the number of days during the year that the residence is rented at a fair rental, whichever is longer.

4) Allows TCAC to award state LIHTCs to developments in a QCT or a DDA if the project is also receiving federal LIHTC, under the following conditions:

a) Developments restrict at least 50% of the units to special needs households; and

b) The state credits do not exceed 130% of the eligible basis of the building.

5) Allows TCAC to replace federal LIHTC with state LIHTC of up to 130% of a project's eligible basis if the federal LIHTC is reduced in an equivalent amount.

6) Defines a QTC as any census tract designated by the Department of Housing and Urban Development (HUD) in which either 50% or more of the households have an income that is less than 60% of the area median gross income or that has a poverty rate of at least 25%.

7) Defines a DDA as an area designated by HUD on an annual basis that has high construction, land, and utility costs relative to area median gross income.

8) Provides that a low-income housing development that is a new building and is receiving 9% federal LIHTC credits is eligible to receive state LIHTC over four years of 30% of the qualified basis of the building.

9) Provides that a low-income housing development that is a new building that is receiving federal LIHTC, is "at risk of conversion" is eligible to receive state LIHTC over four years of 13% of the qualified basis of the building.

10) Defines "at risk of conversion" to mean a property that satisfies all of the following criteria:

    a) A multifamily rental housing development in which at least 50% of the units receive government assistance pursuant to any of the following:

    b) Project based Section 8 vouchers;

    c) Below-Market-Interest-Rate Program;

    d) Federal Rental Housing Assistance Program;

    e) Programs for rent supplement assistance pursuant to Section 101 of the Housing and Urban Development Act of 1965;

    f) Programs pursuant to Section 515 of the Housing Act of 1949; and

    g) Federal LIHTC.

11) Includes an urgency clause.

FISCAL EFFECT: Unknown.

COMMENTS:

California has reduced its funding for the creation of affordable homes by 79%, from approximately $1.7 billion a year to nearly nothing. According to the California Housing Consortium, California has a shortfall of 1.5 million affordable units for extremely low and very-low income renter households. The Public Policy Institute of California reports that 32% of mortgaged homeowners and 47% of renters spend more than one-third of their total household income on housing and that while California has 12% of the nation’s population, it has 20% of the nation’s homeless.

Voter-approved bonds have been an important source of funding to support the creation of affordable housing. Proposition 46 of 2002 and Proposition 1C of 2006 together provided $4.95 billion for affordable housing. These funds financed the construction, rehabilitation, and preservation of 57,220 affordable apartments, including 2,500 supportive homes for people experiencing homelessness, and over 11,600 shelter spaces. In addition, these funds have helped 57,290 families become or remain homeowners. Nearly all of these funds have been awarded.

In 1945, the Legislature authorized local governments to create redevelopment agencies (RDAs) to address urban blight in local communities. RDAs were formed by a city or county that would declare an area blighted and in need of urban renewal. After this declaration, most of the growth in property tax revenue from the "project area" was distributed to the city or county's RDA as "tax increment revenues" instead of being distributed as general purpose revenues to other local agencies serving the area. By 2008, redevelopment was redirecting 12% of property taxes statewide away from schools and other local taxing entities and into community development and affordable housing. In fiscal year 2009-10, redevelopment agencies collectively deposited $1.075 billion of property tax increment revenues into their low and moderate-income housing funds.

In 2011, facing a severe budget shortfall, the Governor proposed eliminating RDAs in order to deliver more property taxes to other local agencies. Ultimately, the Legislature approved and the Governor signed two measures, AB 26 X1 (Blumenfield), Chapter 5, Statutes of 2011-12 First Extraordinary Session, and AB 27 X1 (Blumenfield), Chapter 6, Statutes of 2011-12 First Extraordinary Session, that together dissolved RDAs as they existed at the time and created a voluntary redevelopment program on a smaller scale. In response, the California Redevelopment Association (CRA) and the League of California Cities, along with other parties, filed suit challenging the two measures. The Supreme Court denied the petition for peremptory writ of mandate with respect to AB 26 X1. However, the Court did grant the petition with respect to AB 27 X1. As a result, all RDAs were required to dissolve as of February 1, 2012.

The Department of Housing and Community Development's *California's Housing Future: Challenges and Opportunities Draft Statewide Housing Assessment 2025* (Assessment) finds, "unstable funding for affordable home development is impeding our ability to meet California's housing needs, particularly for lower-income households." In the options to address the state's lack of affordable housing the Assessment proposes identifying "an ongoing source of funding for affordable housing that does not add new costs or cost pressures to the state' General Fund, but that does align with other State policy goals." The report further states "California needs both public and private investment, as well as land use solutions to address critical housing challenges. Funding programs cannot address California's housing need alone and land use policy changes…are critical. However, even with drastic changes in land use policy to increase supply, the needs of certain populations cannot be met by the private market alone. Funding programs allow the State to target resources to these populations."

Purpose of this bill: According to the author, "California is undergoing an unprecedented housing affordability crisis with a shortfall of over one million affordable homes. With the elimination of California's redevelopment agencies and the exhaustion of state housing bonds,

California has reduced its funding for the development and preservation of affordable homes by 79% -- from approximately $1.7 billion a year to nearly nothing. There is currently no permanent source of funding to compensate for this loss. The housing crisis has contributed to a growing homeless population, increased pressure on local public safety nets, and the outward migration of thousands of long-time California residents. The state's primary housing program is the mortgage interest deduction. We invest $5 billion a year in individuals who have already purchased homes while over half of our state is made up of renters. In addition, we invest approximately $300 million to subsidize owners with the means to purchase not one, but two homes. In the face of a severe housing crisis, it is necessary to reevaluate this investment and redirect the revenues subsidizing those with second homes to the LIHTC."

Mortgage interest deduction: In conformity with federal law, California law allows taxpayers to deduct the mortgage interest paid on up to $1 million in debt for a principal and second residence. A second residence is limited to a home that is either not rented out at any point in the year or one that the taxpayer can rent out but must also live in for part of the year. Taxpayers can deduct mortgage interest from both their federal and state tax liability. According to the Franchise Tax Board (FTB), the mortgage interest deduction resulted in approximately $5 billion in revenue loss for 2016-17 of which $360 million is a result of interest deducted on second homes. According to the FTB, on average about 4.2 million taxpayers claim a mortgage interest deduction each year on taxable returns over the last few years. Based on federal data from Fannie Mae, 4.76% of the mortgage market is made up of second homes, so approximately 195,000 of California taxpayers or .5% of the state's total population take a mortgage interest deduction on a second home. According to the FTB the average deduction for a second home in California is roughly $11,600, and at an average tax rate of 8% the average taxpayer would reduce their taxes by $928.

According to the U.S. Center on Budget and Policy Priorities, the mortgage interest deduction is a regressive tax that benefits those at higher incomes that itemize deductions. In 2012, 77% of the benefits went to homeowners with incomes above $100,000. Meanwhile, close to half of homeowners with mortgages — most of them middle- and lower-income families — receive no benefit from the deduction. Approximately 35% of the benefits went to homeowners with incomes above $200,000 and taxpayers in this income group who claimed the deduction received an average subsidy of about $5,000. According to the California Budget and Policy Center, in California of the total $3.8 billion in reduced tax revenue from the mortgage interest deduction in 2012, $2.8 billion or 72% went to households with incomes of $100,000 or more. Those households represent 43% of the households claiming the deduction.

In regards to the mortgage interest deduction, the FTB states in *California Income Tax Expenditures: Compendium of Individual Provisions, Report for 2013 Tax Year Data*, "whether or not increasing homeownership is a valid goal, most economists believe that the value of the tax break is generally capitalized into the value of the home. In other words, on average, housing prices should increase by the expected tax savings over the time period that the house will be owned. Therefore this deduction does not actually make housing more affordable for homeowners. Instead it results in a transfer from the state treasury to people who already owned homes at the time the deduction was granted or, in the case of new construction, to whomever owned the land at the time it becomes obvious that the land will be zoned for residential use. In fact, homeowners who do not itemize or whose income places them in low rate brackets are likely to find housing less affordable because they will not receive a tax reduction large enough

to offset the increasing prices of housing. Additionally if the goal is to encourage homeownership there is no reason to extend the benefit to second homes."

According to a 1990 report issued by the Legislative Analyst's Office (LAO) "the primary rationale for the current mortgage interest deduction is to provide a financial incentive for families to buy a home. However, the tax subsidy made available under this program undoubtedly accrues as a windfall benefit to taxpayers who would have purchased homes anyway, and it encourages the purchase of bigger and more expensive homes, as well as vacation homes rather than basic housing." The report goes on to make recommendations to reform the mortgage interest deduction "to reduce the incentives it currently provides to purchase luxury homes and vacation homes" including to limit the total amount of interest deducted each year or to disallow interest deductions on second homes. At the time the LAO estimated the revenue gain from eliminating the deduction for second homes would be $55 million to $65 million annually.

AB 71 proposes to eliminate the mortgage interest deduction on second homes which on average results in $300 million in lost revenue to the state each year and increase the LIHTC by $300 million. Taxpayers could continue to deduct mortgage interest from their federal tax liability.

Low-Income Housing Tax Credit Program: In 1986, the federal government authorized the LIHTC program to enable affordable housing developers to raise private capital through the sale of tax credits to investors. Two types of federal tax credits are available and are generally referred to as 9% and 4% credits. TCAC administers the program and awards credits to qualified developers who can then sell those credits to private investors who use the credits to reduce their federal tax liability. The developer in turn invests the capital into the affordable housing project.

Each state receives an annual ceiling of 9% federal tax credits. In 2015 it was $2.30 per capita, which worked out to $94 million in credits in California that can be taken by investors each year for 10 years. Federal LIHTCs are oversubscribed by a 3:1 ratio. Unlike 9% LIHTC, federal 4% tax credits are not capped, however they must be used in conjunction with tax-exempt private activity mortgage revenue bonds which are capped and are administered by the California Debt Limit Allocation Committee

In 1987, the legislature authorized a state LIHTC program to augment the federal tax credit program. State tax credits can only be awarded to projects that also receive federal LIHTCs, except for farmworker housing projects, which can receive state credits without federal credits. Investors can claim the state credit over four years. Projects that receive either state or federal tax credits are required to maintain the housing at affordable levels for 55 years.

Changes to the LIHTC: AB 71 would increase the state LIHTC allocation by an additional $300 million to fill the gap in funding that was created by the loss of redevelopment and the exhaustion of state voter-approved bonds. In addition to increasing the total amount of state LIHTC, AB 71 proposes to increase the amount of state tax credits awarded to a project that is also receiving 4% federal tax credits from 13% to 50% of the qualified basis. This would more than triple the amount of equity that an investor purchasing a state tax credit would receive which would bring the return on 4% credits in line with 9% credits and result in greater affordability for the project.

Federal LIHTC can be used anywhere in the state, but projects are given an additional 30% boost on their eligible basis if the project is located in a DDA or a QCT. Because these areas by

definition have a higher-poverty level and there is a higher concentration of extremely low-income or homeless individuals and families, housing needs deep subsidy to make it affordable. Existing state law does not allow state tax credits to be awarded in DDAs and QCTs with one exception: housing developments where 50% of the units are for special needs populations. The rationale for this prohibition is projects in these areas can qualify for more federal tax credits and therefore are already advantaged. AB 71 would also allow state tax credits to be awarded to projects without regard to DDA or QCT status with the main purpose of providing enough state tax credits to match the value of a 9% federal tax credit.

AB 71 includes a set-aside from the $300 million increase to the LIHTC program of $25 million for farmworker housing. There is currently a $500,000 set-aside of low-income housing tax credits for farmworker housing developments serving farmworkers and their families. AB 71 would require any unused credits from the $25 million set-aside to go to qualified non-farmworker housing projects that don't receive funding under the main program.

Many low-income housing developments in the state are older and in need of rehabilitation. These projects need higher levels of equity investments because of their age, level of repairs needed, and the low rents. It is hard for these projects to compete for state tax credits because the assessed value is low and therefore the eligible basis upon which the amount of tax credits the project can qualify for is also low. To assist these older projects, AB 71 would allow them to receive state tax credits of 95% over four years. To qualify, projects would need to be at least 15 years old, serve low and extremely low-income households, be an SRO, in a rural area, and have insufficient state credits to complete substantial rehabilitation due to a low appraised value.

Arguments in support:

According to California Tax Reform Association, there is no valid public policy reason for the second home mortgage interest deduction. The major tax benefit from second homeownership is federal and will continue with this bill. Since there is no other budget or statutory policy of the state to encourage second homes, the only policy argument for this provision is conformity with federal law. While sometimes the state conforms to federal law because of complexity, there is little complexity to disallowing the mortgage interest deduction for a second home.

Arguments in opposition:

The California Association of Realtors (CAR) is opposed to AB 71 unless it is amended to remove the elimination of the mortgage interest deduction for second homes. CAR supports increasing the amount of tax credits available for low income housing however, they argue that the amount of the mortgage interest deduction is already capped regardless of whether the taxpayer has one home or two, that second homes may not necessarily be "vacation" homes but could be used by owners who commute to work during the week, and that the economic health of recreational areas in the state would be harmed by eliminating the mortgage interest deduction on second homes.

Related legislation: AB 35 (Chiu) (2015) increased the LIHTC by $300 million and did not include the elimination of the mortgage interest deduction. The bill was approved 79-0 on the Assembly Floor and was vetoed by the Governor.

Double referred: If AB 71 passes out of this committee, the bill will be referred to the Committee on Revenue and Taxation.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Consortium (co-sponsor)
California Housing Partnership (co-sponsor)
Housing California (co-sponsor)
Abode Communities
ACCE
Affirmed Housing
Betty T. Yee, California State Controller
California Alternative Payment Program Association
California Apartment Association
California Bicycle Coalition
California Coalition for Rural Housing
California Community Economic Development Association
California Reinvestment Coalition
California Tax Reform Association
CCraig Consulting
Christian Church Homes
City of Oakland
Community Development Commission of Mendocino County
Community Housing Opportunities Corporation
Community Housing Partnership
Council of Community Housing Organizations, San Francisco
Downtown Women's Center
EAH Housing
East Bay Developmental Disabilities Legislative Coalition
East bay Housing Organizations
Eden Housing
Family Care Network, Inc.
First Place for Youth
Fred Finch Youth Center
Fresno Housing Authority
Friends Committee on Legislation of California
Greenbelt Alliance
Grounded Solutions Network
Highridge Costa Companies
House Farm Workers!
Housing Authority of the County of Santa Barbara
Housing Choices Coalition
Housing Consortium of the East Bay
Housing Trust Fund, San Luis Obispo County
Housing Trust Silicon Valley
Innovative Housing Opportunities

John Stewart Company
LeadingAge California
LifeSteps
LINC Housing
Little Tokyo Service Center
Manzanita Services
Mercy Housing
MidPen Housing Corporation
Move LA
Mutual Housing California
Napa Valley Community Housing
Non-Profit Housing Association of Northern California
Promise Energy
Public Advocates
Resources for Community Development
Rural Community Assistance Corporation
Sacramento Housing Alliance
San Diego Housing Federation
Satellite Affordable Housing Associates
Self-Help Enterprises
Skid Row Housing Trust
Small Business for Affordable Housing, Petaluma
Southern California Association of Nonprofit Housing
State Building and Construction Trades Council of California
SV@Home
Tenderloin Neighborhood Development Corporation
The Kennedy Commission
The Pacific Companies
Wakeland Housing and Development Corporation

Opposition

California Association of Realtors

Analysis Prepared by: Lisa Engel / H. & C.D. / 916-319-2085

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 73 (Chiu, Caballero, Bonta and Kalra) – As Amended March 28, 2017

SUBJECT: Planning and zoning: housing sustainability districts.

SUMMARY: Allows 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 district's ordinance. Specifically, **this bill**:

1) Defines the following terms for the purposes of cities and counties creating housing sustainability districts:

   a) "Approving authority" to mean an agency of a city, county, or city and county that is established in the city or county's housing sustainability district ordinance and designated to review permit applications for development within the housing sustainability district, as specified.

   b) "City, county, or city and county" to include a charter city, charter county, or a charter city and county [analysis will refer to "city or county" hereafter].

   c) "Department" to mean the Department of Housing and Community Development (HCD).

   d) "Developable area" to mean the area within a housing sustainability district that can be feasibly development into residential or mixed use development, including land area occupied by or associated with underutilized residential, commercial, or industrial buildings or uses that have the potential to be converted for residential or mixed use, in accordance with the rules and regulations of the office, except for the following:

      i) Land that is already substantially developed, including existing parks and open space; or,

      ii) Areas exceeding one-half acre that are unsuitable for development due to topographical features or environmental preservation.

   e) "Eligible location" to mean any of the following:

      i) An area located within one-half mile of public transit;

      ii) An area of concentrated development; or,

      iii) An area that, by virtue of existing infrastructure, transportation access, existing underutilized facilities, or location, is highly suitable for a residential or mixed use housing sustainability district.

   f) "Mixed use" to mean that up to 50% of the square footage of a proposed development is designated for nonresidential use.

   g) "Office" to mean the Office of Planning and Research (OPR).

h) "Project" to mean a proposed residential or mixed use development within a housing sustainability district.

i) "Housing sustainability district" to mean an area within a city or county designated as specified, that is superimposed over an area within the jurisdiction of the city, county, or city and county in which a developer may elect to develop a project in accordance with either the housing sustainability district ordinance or the city or county's otherwise applicable general plan and zoning ordinances.

j) "Housing sustainability district ordinance" to mean the ordinance adopted by a city, or county, as specified.

2) Allows a city or county to establish by ordinance a housing sustainability district, upon receipt of preliminary approval by OPR, as specified.

3) Requires the city or county to adopt the ordinance in accordance with the requirements of zoning regulations in state law.

4) Requires an area proposed to be designated as a housing sustainability district to satisfy all of the following requirements:

a) The area is an eligible location, including any adjacent area served by existing infrastructure and utilities;

b) The area is zoned to permit residential use through the ministerial issuance of a permit. Other uses may be permitted by conditional use or other discretionary permit, provided that the use is consistent with residential use;

c) Density ranges for multifamily housing for which the minimum densities shall not be less than those deemed appropriate to accommodate housing for lower-income households as set forth in Housing Element Law, and a density range for single-family attached or detached housing for which the minimum densities shall not be less than 10 units to the acre. A density range shall provide the minimum dwelling units per acres and the maximum dwelling units per acre;

d) The development of housing is permitted, consistent with neighborhood building and use patterns and any applicable building codes;

e) Limitations or moratoriums on residential use do not apply to any of the area, other than any limitation or moratorium imposed by court order;

f) The area is not subject to any general age or other occupancy restrictions, except that the city or county may allow for the development of specific projects exclusively for the elderly or the disabled for assisted living;

g) Housing units comply with all applicable federal, state, and local fair housing laws;

h) The area of the proposed housing sustainability district does not exceed 15% of the total land area under the jurisdiction of the city or county, unless OPR approves a larger area, as specified;

i) The total area of all housing sustainability districts within the city or county does not exceed 30% of the total land area under the jurisdiction of the city or county;

j) The ordinance establishing the housing sustainability district provides for the manner of review by an approving authority, as designated by the ordinance, as specified, and in accordance with the rules and regulations adopted by OPR; and,

k) Development projects in the area comply with requirements regarding the replacement of affordable housing units affected by the development.

5) Allows the city or county to apply uniform development policies or standards that will apply to all projects within the housing sustainability district, including parking ordinances, public access ordinances, grading ordinances, hillside development ordinances, flood plain ordinances, habitat or conservation ordinances, view protection ordinances, and requirements for reducing greenhouse gas emissions.

6) Allows the city or county to provide for mixed use development within the housing sustainability district.

7) Provides that an amendment or repeal of a housing sustainability district ordinance shall not become effective, unless HCD provides written approval to the city or county. Allows the city or county to request approval of a proposed amendment or repeal by submitting a written request to HCD. Requires HCD to evaluate the proposed amendments or repeal for the effect of that amendment or repeal on the city or county's housing element. Provides that if HCD does not respond to a written request for amendment or repeal of an ordinance within 60 days of receipt, the request shall be deemed approved.

8) Requires the housing sustainability district ordinance to do all of the following:

a) Provide for an approving authority to review permit applications for development within the housing sustainability district, as specified;

b) Require that at least 20% of the residential units constructed within the housing sustainability district be affordable to very low-, low-, and moderate-income households and subject to a recorded affordability restriction for at least 55 years, subject to c), below;

c) For a city or county that includes its entire regional housing needs allocation within the district, the percentages of the total units constructed or substantially rehabilitated within the district shall match the percentages in each income category of the city or county's regional housing need allocation. States that nothing in this section shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, general plan amendment, specific plan, resolution or other land use policy or regulation requiring that any housing development contain a fixed percentage of affordable housing units.

d) Specify that a project is not deemed to be for residential use or it is infeasible for actual use as a single or multifamily residence;

e) Require that an applicant for a permit for a project within the housing sustainability district do the following, as applicable:

i) Certify to the approving authority that either of the following is true, as applicable:

(1) The entirety of the project is a public work for purposes of state prevailing wage laws; or,

(2) If the project is not in its entirety a public work, that all construction workers employed in the execution of the project will be paid at least the general prevailing rate of per diem wages for the type of work and geography, as determined by the Director of Industrial Relations, as specified. If the approving authority approves the application, then for those portions of the project that are a public work, all of the following shall apply:

(a) The applicant shall include prevailing wage requirements in all contracts for the performance of the work;

(b) Contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate or per diem wages;

(c) The obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment, as specified, except as provided for in (d) below;

(d) If all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure, then (c) above does not apply; and,

(e) The requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise proved in a bona fide collective bargaining agreement to cover the worker, as specified.

ii) For projects with a cost exceeding an unspecified dollar amount, certify to the approving authority that a skilled and trained workforce, as specified, will be used to complete the project. If the approving authority approves the application, the following shall apply:

(1) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the project;

(2) Every contractor and subcontractor shall use a skilled and trained workforce to complete the project;

(3) The applicant shall provide to the approving authority, on a monthly basis while the project or contract is being performed, a report demonstrating compliance, as specified, and except as provided in 4), below. States that a monthly report shall be a public record under the California Public Records Act and shall be open to public inspection. Failure to provide a monthly report demonstrating compliance shall be subject to a civil penalty of $10,000 per month for each month for which the report has not been provided. Any contactor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of $200 per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner, as specified;

(4) Specifies that 3), above, shall not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement (PLA) that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure; and,

(5) Provides for relocation assistance for persons and families displaced from their residences due to development within the district.

9) Provides that this section shall not be construed to affect the authority of a city or county to amend its zoning regulations, as specified, except to the extent that an amendment affects a housing sustainability district.

10) Requires the city or county to comply with a streamlined environmental review process pursuant to 44), below.

11) Allows a city or county that has proposed an ordinance establishing a housing sustainability district to apply to OPR for preliminary approval of a housing sustainability district, and provides that OPR shall make a preliminary determination as to the eligibility of the proposed housing sustainability district for approval.

12) Provides that OPR shall approve an application for preliminary approval for a zoning incentive payment if it determines that the proposed ordinance meets the requirements of the bill's provisions and the city or county's housing element is in compliance. Requires OPR to inform the applicant of the deficiencies in its application, should OPR deny the application. Allows a city or county to reapply upon correcting those deficiencies.

13) Requires OPR to transmit its determination to the applicant and to HCD.

14) Requires an applicant city or county, to submit all of the following information with its application:

a) A description of the boundaries of the proposed district;

b) A description of the developable land within the proposed district;

c) A description of other residential development opportunities within the city or county, including infill development and reuse of existing buildings within already developed areas;

d) A copy of the housing element, as specified;

e) A copy of the adopted housing sustainability district ordinance;

f) A copy of the environmental impact report prepared pursuant to the streamlined environmental review process pursuant to 44), below;

g) A copy of the city or county's design review standards, if any, as specified; and,

h) Any other materials that establish the city or county's compliance with the prevailing wage and public work requirements listed in 8d), above.

15) Requires OPR to confirm approval within 45 days of receipt, following preliminary approval of an application and upon receipt of acknowledgment that the ordinance has taken effect.

16) Requires HCD, on or before October 1 of each year following the approval of a city or county's housing sustainability district by OPR, to issue a certificate of compliance if it finds that the city, county, or city and county has satisfied all of the following requirements:

a) The city or county has in effect a housing sustainability district ordinance;

b) The housing sustainability district complies with the minimum requirements of 4), above;

c) The city or county has only denied a permit for a residential development consistent with its housing sustainability district ordinance, the provisions of its housing element, or the provisions of this bill; and,

d) The city or county has not adopted a design review standard pursuant to 35), below, that adds unreasonable costs to a residential or mixed use development, or impairs the economic feasibility of a proposed development, within the district.

17) Provides that if HCD finds that a city or county does not satisfy all of the requirements of 16), above, then HCD may deny certification of the district. Provides that a denial shall not affect the validity of the district ordinance or the application of the ordinance to a development or proposed development within the district.

18) Allows HCD to require a city or county to provide any information it deems necessary to review the city or county's housing sustainability district, as required.

19) Specifies that a city or county with a housing sustainability district approved by OPR is entitled to an unspecified zoning incentive payment, upon appropriation of funds by the Legislature for that purpose, based on the projected construction of new residential units. Prohibits replacement units from being considered new residential units.

20) Requires OPR to issue the first half of the zoning incentive payment upon preliminary approval of the ordinance and issuance of the EIR. Requires HCD to issue the second half of the zoning incentive payment within 10 days of submission of proof of issuance of building permits by the city or county for the projected units of residential construction within the zone, as specified.

21) Allows a city or county to incorporate provisions in its ordinance prescribing the contents of an application for a permit for residential development.

22) Allows a city or county to charge an application fee to persons seeking approval of a project within the district, as specified.

23) Allows the ordinance to provide for referral of an application for a permit to any officers, agencies, agencies, boards, or bureaus of the city or county for review and comment, and requires comments within 60 days of receipt.

24) Requires the applicable provisions of the city or county's general plan and district ordinance in effect at the time an application is submitted to the approving authority to govern the application for the purposes of the following:

    a) The processing and review of the application;

    b) The pendency of any appeal of a decision of the approving authority;

    c) If the application is approved, for five years following approval of the application; and,

    d) If the application is denied, to any further application for the same proposed development filed within two years following the date of the denial, unless the applicant elects to proceed under the city or county's general plan and ordinance in effect at the time when he or she submits that further application.

25) Requires the applicant to file an application for a permit with the clerk of the city or county and with the approving authority.

26) Requires the authority to conduct a public hearing in accordance with the Ralph M. Brown Act, and issue a written decision on the application within 120 days of receipt of the application, unless extended by agreement between the approving authority and the applicant. Requires the authority to file a copy of its written decision with the clerk of the city or county.

27) Deems an application approved if the approving authority fails to act within 120 days, or within the period agreed upon, and requires notice to any interested parties and the clerk of the city or county within 14 days of the application being deemed approved. Requires the notice provided to interested parties to specify that any appeals must be filed within 20 days.

28) Requires the approving authority to issue to the applicant a copy of its written decision, as specified.

29) Requires the approving authority to consider the requirements of the ordinance, and the requirement for replacement dwellings, as specified.

30) Allows the approving authority to deny an application only for the following reasons:

    a) The proposed development project does not fully comply with the ordinance;

    b) The applicant has not submitted all of the required information or paid an application fee, as specified; or,

c) The approving authority determines, based on substantial evidence in light of the whole record of the public hearing on the project, that a physical condition on the side of development that was not known and could not have been discovered with reasonable investigation at the time the application was submitted would have a specific adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, as specified.

31) Requires the clerk of the city or county to certify the following, as applicable, on a copy of the written decision of the approving authority:

a) No appeal has been filed, or has been dismissed or denied, within 20 days of the issuance of the decision of the approving authority; or,

b) The application is deemed approved by reason of the failure of the approving authority to issue a decision within 120 days of submission.

32) Allows the applicant to appeal a decision of an approving authority by filing a complaint in the superior court. Requires appeals to be filed within 20 days after the approving authority has filed its decision to deny or conditionally approve the application with the clerk. Requires the applicant to provide notice of the appeal and a copy of the complaint to the clerk. Requires the applicant to, within 14 days of filing the complaint, serve written notice and provide a copy of the complaint to all defendants by certified mail. Requires the court to dismiss the complaint if the applicant does not, within 21 days of filing, file an affidavit with the clerk certifying that the notices were provided.

33) Requires the complaint to allege the specific reasons why the approving authority's decision does not satisfy the requirements of the district ordinance, the provisions of this bill, or other applicable law. Requires the complaint to name the approving authority as a defendant.

34) Requires the approving authority to have the burden of proving that its decision satisfies the requirements of the district ordinance, the provisions of this bill, or other applicable law based on substantial evidence in light of the whole record.

35) Allows a city or county to, in accordance with regulations adopted by OPR, adopt design review standards applicable to development projects within the district to ensure that the physical character of development within the district is complementary to adjacent buildings and structures and is consistent with the city or county's general plan, including the housing element.

36) Prohibits a design review standard from adding unreasonable costs to a residential or mixed use development, or unreasonably impair the economic feasibility of a proposed development within the district. Provides that design review of a development shall not constitute a "project" for purposes of CEQA law.

37) Requires design review standards to be adopted at the same time as the ordinance and submitted to OPR with the city or county's application. Specifies that any subsequent additional design review standards or amendment of existing design review standards to be subject to written approval by HCD, as specified.

38) Requires, if a proposed development within a district includes any parcels being used for affordable housing at the time the application is submitted to the approving authority, the approving authority to condition its approval of the application on the applicant's agreement to replace those affordable housing units.

39) For purposes of 38), above, defines the following terms:

a) "Affordable housing" to mean a parcel of property that meets any of the following criteria:

i) The parcel includes rental dwelling units that are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower- or very low-income;

ii) The parcel is subject to rent or price control through a public entity's valid exercise of its police power; or,

iii) The parcel includes a housing development that is currently occupied by low- or very low-income households.

b) "Replace" to mean either of the following, as applicable:

i) If any affordable housing units are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower-income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower-income renter households occupied these units in the same proportion of lower-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database. For unoccupied affordable housing units described in a development with occupied units, the proposed housing development shall provide units of equivalent size, or both, to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower-income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower-income renter households occupied these units in the same proportion of lower-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from HUD's Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. The replacement units shall be subject to a recorded affordability restriction for at least 55 years.

ii) If all affordable housing units have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size, 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 in the same or lower-income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low-income renter households occupied these units in the same proportion of low-income and very low-income renter households to all renter households within the jurisdiction, as determined by the most recently available data from HUD's database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. The replacement units shall be subject to a recorded affordability restriction for at least 55 years.

iii) For any dwelling unit specified in i), above, that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power and that is or was occupied by persons or families above lower-income, the city or county may do either of the following, notwithstanding ii), above:

(1) Require that replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units shall be subject to 39b), above; and,

(2) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit described in 39b)i), above, is replaced. Unless otherwise required by the jurisdiction's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

iv) Defines the term "equivalent size" to mean that the replacement units contain at least the same total number of bedrooms as the units being replaced.

40) Requires OPR to be responsible for the administration of the approval of a housing sustainability district and the award of the first half of the incentive payment. Requires HCD to be responsible for the continued compliance of a district with the bill's provisions and the award of the second half of the incentive payment, as specified.

41) Requires HCD to conduct, or cause to be conducted, an annual review of the housing sustainability district program. Specifies that HCD may require participating cities and counties to provide data on districts within their jurisdiction as necessary to conduct this review and prepare the report.

42) Requires HCD to publish a report on its Internet Web site not later than November 1, 2018, and each November 1 thereafter, and requires the report to include all of the following:

a) The status of the program through the fiscal year prior to the publication of the report;

b) An identification and description of cities and counties seeking preliminary determination from OPR;

c) An identification of approved housing sustainability district and the incentive payments awarded;

d) A summary of the land area within both proposed and approved housing sustainability districts and the purposes for which it is zoned;

e) The number of projects under review by an approving authority, proposed residential units, building permits issued, and completed housing units as of the date of the report's publication; and,

f) An estimate, for the current and immediately succeeding fiscal year, of the number and size of proposed new districts, potential number of residential units allowed in new districts, and anticipated construction activity.

43) Requires the return of the incentive payment by the city or county if no construction has started in a district within three years of the date that the first half of the incentive payment was made. Requires amounts repaid to be used to further incentive payments.

44) Requires, for housing sustainability districts, the following environmental review:

a) Requires a lead agency to prepare an EIR when designating a district to identify and mitigate, to the extent feasible, environmental impacts resulting from the designation. Requires the EIR to identify mitigation measures that may be undertaken by housing projects in the district to mitigate the environmental impacts identified by the EIR.

b) Requires the Judicial Council, on or before July 1, 2018, to adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the EIR for the designation or the approval of the designation that require the actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of certification of the record of proceedings, as specified. These procedures shall apply to an action or proceeding brought to attack, review, set aside, void, or annual the certification of the EIR prepared as specified.

c) Requires the draft and final EIR to include a notice in not less than 12-point type stating the following:

THIS EIR IS SUBJECT TO SECTION 21155.10 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD FOR THE DRAFT EIR. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OF THE EIR OR THE APPROVAL OF THE DESIGNATION IN THE EIR IS SUBJECT TO THE PROCEDURES SET FORTH IN SECTION 21155.10 OF THE PUBLIC RESOURCES CODE. A COPY OF SECTION 21155.10 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS EIR.

d) Requires the draft and final EIR to contain, as an appendix, the full text of this section of the bill related to environmental review.

e) Requires the lead agency, within 10 days after the release of the draft EIR, to conduct an informational workshop to inform the public of the key analyses and conclusions of that report.

f) Requires, within 10 days before the close of the public comment period, the lead agency to hold a public hearing to receive testimony on the draft EIR. Requires the transcript of the hearing to be included as an appendix to the final EIR.

g) Allows a commenter on the draft EIR to submit to the lead agency a written request for nonbinding mediation, within five days following the close of the public comment period. Requires the lead agency to participate in nonbinding mediation with all commenters who submitted timely comments on the draft EIR and who requested the mediation. Requires mediation to end no later than 35 days after the close of the public comment period. Requires a request for mediation to identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated. Requires the lead agency to select one or more mediators who shall be retired judges or recognized experts with at least five years' experience in land use and environmental law or science, or mediation. Requires a mediation session to be conducted on each area of dispute with the parties requesting mediation on that area of dispute. Requires the lead agency to adopt, as a condition of approval, any measures agreed upon by the lead agency and any commented who requested mediation. Provides that a commenter who agrees to a measure shall not raise the issued addressed by that measure as a basis for an action or proceeding challenging the lead agency's decision to certify the EIR of the designation of the district.

h) Provides that the lead agency need not consider written comments submitted after the close of the public comment period, unless certain conditions are met.

i) Requires the lead agency to file the notice required in existing law within five days after the approval of the designation.

j) Requires the lead agency to prepare and certify the record of the proceedings as specified.

k) Requires the lead agency, no later than three business days following the date of the release of the draft EIR, to make available to the public in a readily accessible electronic format the draft EIR and all other documents submitted to or relied on by the lead agency in the preparation of the draft EIR. Requires that additional documents prepared after the release of the draft EIR that are part of the record to be made available to the public in the same manner.

l) Exempts documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected from being made readily accessible by the lead agency. Requires the lead agency to index these documents, as specified.

m) Requires the lead agency to encourage written comments on the project to be submitted in a readily accessible electronic format, as specified. Requires the lead agency to convert comments not in a readily accessible electronic format with seven days after receipt.

n) Requires the lead agency to indicate in the record of the proceedings comments received that were not considered by the lead agency, as specified, and not include the content of the comments.

o) Requires the lead agency to certify the record of the proceedings and provide an electronic copy of the record, within five days after the filing of the notice required by existing law, to a party that has submitted a written request for a copy. Allows a lead agency to charge and collect a reasonable fee from a party requesting a copy of the record for the electronic copy, as specified.

p) Requires the lead agency, within 10 days after being served with a complaint or a petition for a writ of mandate, to lodge a copy of the certified record of proceedings with the superior court. Requires any dispute over the content of the record to be resolved by the superior court.

q) Specifies that CEQA does not apply to a housing project undertaken in a district designated by a local government if both of the following are met:

   i) The housing project meets the conditions specified in the designation for the district; and,

   ii) The housing project is required to implement appropriate mitigation measures identified in the EIR to mitigate environmental impacts identified in that EIR.

45) Adds housing sustainability districts to the section of law related to the reforms and incentives used to facilitate and expedite the construction of affordable housing, as declared by the Legislature.

EXISTING LAW:

1) Requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element.

2) Requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an 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 if it finds that the project will not have that effect. Requires a lead agency to prepare a mitigated 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, as revised, would have a significant effect on the environment.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

1) **Bill Summary.** This bill would allow a city or county to create a housing sustainability district in consultation with OPR and HCD. Because the zoning and environmental review would be completed when the district is being created, development projects that comply with the housing sustainability district ordinance would only need ministerial approval. Such

development projects would be required to pay prevailing wage. The bill would also create a streamlined judicial review on any cases challenging the district's EIR.

To encourage a city or county to form a housing sustainability district, the bill would incentivize the creation by specifying that the city or county would receive zoning incentive payments at two stages: (1) An incentive payment when the district is created, issued by OPR upon preliminary approval of the district ordinance and issuance of the EIR; and, (2) Upon permitting housing units within the district, an additional incentive payment would be issued by HCD to the city or county. The bill requires that incentive payments must be returned if construction has not commenced within three years from the date of the first incentive payment.

This bill is sponsored by the author.

2) **Author's Statement.** According to the author, "California is facing a severe housing crisis which, if left unaddressed, will continue to threaten our economic competitiveness, our ability to achieve our climate change goals through proper planning, and the fundamental prosperity and success of our residents.

"California's poverty rate is 20th in the nation but, when housing is factored in, it jumps to number one. The lack of significant investment in programs to support construction of housing that is affordable has had a considerable impact on the growing inequity in our state. About 1.7 million low-income renter households (almost 14% of all households) in California report spending *more than half* of their income on housing. California now has an annual affordable housing gap that totals $50 billion to $60 billion. The housing shortage currently costs the California economy between $143 billion and $233 billion per year, an effect that will continue to worsen. According to the McKinsey Global Institute, at current construction rates, California will have a projected housing shortfall of 3.5 million homes by 2025.

"AB 73 spurs the creation of much needed housing on infill sites around public transportation by incentivizing local governments to complete upfront zoning and environmental review and rewarding them when they permit housing."

3) **Policy Considerations.** The Committee may wish to consider the following:

   a) **Will cities and counties use this tool?** The process contained in the bill to designate a district is rigorous and requires a fair amount of upfront work and investment for the city or county to undertake. Additionally, the bill gives authority to OPR and HCD in terms of the approval process for the district and other subsequent actions. For instance, the bill specifies that an amendment or repeal of a housing sustainability district ordinance cannot become effective, unless HCD provides written approval to the city or county, and sets up a formal process for the city or county to request approval of a proposed amendment or repeal.

   The bill also allows a city or county to adopt design review standards applicable to development projects within the district, but only in accordance with regulations adopted by OPR. The bill specifies that the design review standards shall not add unreasonable costs or unreasonably impair the economic feasibility of a proposed development. Given

these issues, the Committee may wish to consider whether the unspecified zoning incentive payments are enough of a benefit for a city or county to undertake the costs and work associated with creating a district.

b) **Identification of funding source.** The bill specifies that a city or county with an approved district is entitled to a zoning incentive payment, upon appropriation of funds by the Legislature for that purpose, to be based upon the number of new residential units constructed within the district. However, no funding source is specified.

c) **Repayment of incentive payment.** The bill requires that if no construction has started in a district within three years of the date that the first half of the incentive payment was made, then the city or county must return the full amount of the payment to HCD. The Committee may wish to consider whether there are factors outside of a city or county's control that might result in there being no construction in this timeframe, and whether the city or county should be penalized for this.

d) **Concerns.** A coalition of groups in San Francisco called the SF Council of Community Housing Organizations submitted a letter of concerns on this bill. They note that the bill is "in effect setting up a By-Right development system…and while it is an "opt-in" planning district state authorization, practically speaking that means pro-development jurisdictions like San Francisco are more likely to opt in and slow-growth suburban jurisdictions not." The SF Council of Community Housing Organizations supports establishing core conditions for any entitlement streamlining legislation including: (1) a safe harbor for communities where sufficient production of affordable housing does not warrant state pre-emption over local policy and decision-making; (2) a significant affordable housing standard on top of any local inclusionary requirements; and, (3) that local governments maintain the authority to enact, expand and enforce local affordable housing policies, including inclusionary housing, incentive zoning, impact fees, labor, and anti-demolition policies and proper environmental review, among other core minimum conditions.

4) **Arguments in Support.** Supporters argue that this bill is a creative solution to help California address the housing crisis, similar to what Massachusetts has enacted called the Smart Growth Zoning Overlay District Act (commonly known as 40R). Supports believe that the success of 40R indicates that incentivizing local governments to complete upfront zoning and environmental review and rewarding them when they permit housing will jumpstart the creation of much needed housing.

5) **Arguments in Opposition.** None on file.

6) **Double-Referral.** This bill is double-referred to the Natural Resources Committee and will be heard next in that Committee, should the bill pass this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association.
LeadingAge California

Concerns

SF Council of Community Housing Organizations

Opposition

None on file

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958

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March 9, 2017

The Honorable Mike McGuire
Chair, Senate Governance and Finance
State Capitol, Room 5061
Sacramento, CA 95814

RE: SB 2 (Atkins) Building Homes and Jobs Act
NOTICE OF SUPPORT

Dear Senator McGuire,

The League of California Cities is pleased to support SB 2, the Building Homes and Jobs Act. This measure would generate hundreds of millions of dollars per year for affordable housing, supportive housing, emergency shelters, transitional housing and other housing needs via a $75 recordation fee on specified real estate documents.

The League of California Cities has long supported efforts to provide additional state funding for affordable housing. Cities are eager to help spur the construction of new affordable housing units, but with the loss of over $1 billion per year of redevelopment housing funds they lack the resources to do so. This measure would provide an ongoing, permanent source of funding that would allocate 50% of the proceeds to local governments, so that they may be used to address housing needs at the local level. SB 2 would also help leverage additional federal, local and private investment including nontraditional funding sources such as tax increment and innovative preventative services.

The Building Homes and Jobs Act is a much needed measure that would provide a key incentive for the construction of affordable housing. While the timeliness of the environmental review, permitting, and approval processes can always be improved to help reduce costs, affordable housing projects require some form of financial assistance. This measure is a significant step in the right direction.

We appreciate the author's leadership on this critical issue and look forward to working with you and others to pass this measure. If you have any questions, or if I can be of any assistance, please call me at (916) 658-8264.

Sincerely,

Jason Rhine
Legislative Representative

Cc: Members, Senate Governance and Finance Committee
Colin Grinnell, Staff Director, Senate Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus

SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2017 - 2018 Regular Session

SB 2 (Atkins) - Building Homes and Jobs Act

Version: March 23, 2017
Urgency: Yes
Hearing Date: April 3, 2017
Policy Vote: T. & H. 9 - 3, GOV. & F. 5 - 2
Mandate: Yes
Consultant: Mark McKenzie

This bill meets the criteria for referral to the Suspense File.

Bill Summary: SB 2, an urgency measure, would impose a fee of $75 on the recording of each real estate document, not to exceed $225 per transaction, except those recorded in connection with an owner-occupied residential property transfer or those subject to a documentary transfer tax, as specified. Fee revenues would be available for expenditure for affordable housing purposes, upon appropriation by the Legislature.

Fiscal Impact:

- Unknown fee revenue gains, likely in the range of $200 million to $300 million annually depending on the volume of recorded documents (Building Homes and Jobs Trust Fund – BHJ Trust Fund). See staff comments.

- Unknown ongoing costs, likely in the millions annually beginning in 2018-19, for the Department of Housing and Community Development (HCD) and California Housing Finance Agency (CalHFA) to administer the programs funded by new fee revenues deposited into the BHJ Trust Fund. The bill authorizes up to 5% of any funds allocated to state agencies to administer programs supported by the fee revenues, which could be as high as $10 million to $15 million annually using the revenue estimates noted above. All HCD and CalHFA administrative costs would be fully covered by fee revenues deposited into the BHJ Trust Fund.

- HCD costs of approximately $228,000 and 1.5 PY of staff time in 2017-18 to develop the Building Jobs and Homes Investment Strategy, as specified. HCD would incur similar costs every five years for periodic updates of the investment strategy. Initial costs would be a General Fund obligation, while ongoing costs would be supported by BHJ Trust Fund revenues.

- Unknown costs, potentially in the low hundreds of thousands annually beginning in 2017-18, to support the activities of the 15-member Building Homes and Jobs Trust Fund Governing Board, including administrative staff support and expenses related to board meetings. (General Fund)

- Costs in the range of $250,000 to $350,000 (General Fund) in 2019-20 to the State Auditor's Office (CSA) to conduct an initial audit. Ongoing periodic audit costs in the range of $150,000 to $250,000 (General Fund). Staff notes that the bill does not currently provide funding for CSA audits, as required by Joint Rule 37.4 (b). See staff comments.

- Unknown local mandate costs, not state-reimbursable. The bill authorizes the county recorder to deduct actual and necessary costs to administer to collection of recordation fees prior to transmitting the balance to the state.

Background: The Department of Housing and Community Development and the California Housing Finance Agency (CalHFA) administer numerous programs designed to make housing more affordable for California families and individuals, including: the Multifamily Housing Program, which funds construction, rehabilitation, and preservation of housing for lower income households; the Joe Serna, Jr. Farmworker Housing Program, which funds the development of ownership or rental homes for agricultural workers; the Emergency Housing Assistance Program, which funds emergency shelters and transitional homes for homeless individuals and families; the CalHome Program, which funds downpayment assistance, home rehabilitation, counseling, self-help mortgage assistance programs, and technical assistance; and the California Homebuyer Downpayment Assistance Program, which aids first-time homebuyers with down payment and/or closing costs.

The state has typically funded state housing programs through the issuance of general obligations bonds. Most recently, voters approved Proposition 46 in 2002, which provided $2.1 billion in housing bonds, and Proposition 1C in 2006, which authorized the issuance of an additional $2.85 billion in general obligation bonds for various housing programs. Nearly all of the Propositions 46 and 1C bond funds that support affordable housing projects and programs have been allocated.

Apart from general obligation bonds, tax increment revenues provided pursuant to the Community Redevelopment Law have historically been a major source of affordable housing funds. Specifically, existing law required redevelopment agencies to deposit 20% of all tax increment revenue available to the agency into their Low and Moderate-Income Housing Funds to increase, improve, and preserve the community's supply of low and moderate income housing available at an affordable housing cost. In the 2009-10 fiscal year, $1.075 billion of redevelopment property tax increment revenues were set aside for affordable housing. As part of a General Fund solution in the 2011-12 budget, however, ABx1 26 (Blumenfield) was enacted to eliminate redevelopment agencies, thereby eliminating a significant source of statewide affordable housing funds.

The California Constitution generally prohibits transaction or sales taxes on transfers of real property (Article XIIIA, Section Four). Existing law, which predates this prohibition, authorizes counties and cities to approve an ordinance to impose a documentary transfer tax (DTT). The DTT applies to deeds, instruments, and writings that convey or transfer interests in property within that jurisdiction, and generally equal to fifty-five cents ($0.55) for each five hundred dollars ($500) of value conveyed.

County recorders accept and record documents relating to real property, such as deeds, grants, transfers, and tax liens, as well as other documents and records such as birth certificates, powers of attorney, and marriage licenses. In addition to collecting the DTT, state law allows county recorders to charge fees limited to specific dollar amounts on every recorded instrument, paper, or notice. Local agencies retain the entirety of the DTT revenues and nearly all other recording fees for local purposes, except for specified fees on vital records and building permits that are dedicated to statewide purposes.

This bill is intended to provide a permanent source of affordable housing funds to partially offset the loss of funding due to the elimination of redevelopment tax increment funds and the impending depletion of housing bond funds.

Proposed Law: SB 2 would enact the Building Homes and Jobs Act. Specifically, this bill would impose a fee of $75, not to exceed $225 per transaction, at the time of recording of specified real estate instruments, papers, or notices, not including those recorded in connection with a transfer subject to the imposition of a documentary transfer tax (property transfers) or transfers of owner-occupied residential real property. After deducting administrative costs incurred by the county recorder, the fee revenues would be sent to the Controller on a quarterly basis for deposit in the Building Homes and Jobs Trust Fund (BHJ Trust Fund), created by the bill.

The funds would be available, upon appropriation by the Legislature, as follows:

- 20% for affordable owner-occupied workforce housing.
- 10% to address affordable homeownership and rental housing opportunities for agricultural workers and their families.
- The remainder may be used for a number of specified affordable housing purposes, including: the development, acquisition, rehabilitation, and preservation of housing affordable to low and moderate income households; affordable rental and ownership housing for those with incomes up to 120% of the area median; specified matching funding purposes; capitalized reserves for new permanent supportive housing; emergency shelters and transitional and permanent rental housing, accessibility modifications; homeownership opportunities, including downpayment assistance; planning grants; and local incentives or matching funds for those approving new affordable housing developments.

Up to 5% of funds appropriated or allocated to a state or local entity may be used for costs related to the administration of the housing program for which the allocation or appropriation was made.

The bill would require HCD, in consultation with other specified state entities, to develop a Building Homes and Jobs Investment Strategy (investment strategy) that identifies the five-year statewide goals, objectives, and affordable housing needs, meets specified minimum objectives, provides for a geographically balanced distribution of funds (including 50% direct allocation to local agencies), and specified requirements that local agencies must meet in order to receive an allocation of funds. The investment strategy would be submitted to the Legislature in the spring of 2018 and updated every five years thereafter, after holding at least four public workshops throughout the state.

SB 2 would establish the Building Homes and Jobs Trust Fund Governing Board (governing board), consisting of the State Treasurer, the Director of HCD, the Executive Director of CalHFA, six members appointed by the Governor, three members appointed by the Senate Rules Committee, and three members appointed by the Speaker of the Assembly, as specified. The governing board would review and advise HCD on the development of the investment strategy, and would have the authority to review and approve HCD recommendations for all funds distributed from the BHJ Trust Fund.

This bill would require the California State Auditor's Office to conduct periodic audits, beginning two years after enactment, to ensure that the annual allocation to individual programs is awarded by HCD in a timely fashion. SB 2 would also require HCD to include information in its existing annual report on how the funds provided by the bill were expended in the previous year, including efforts to promote a geographically balanced distribution of funds, impacts on job creation, the effectiveness of homelessness assistance, and determinations of whether any funds derived from recording fees are used for unauthorized purposes.

Related Legislation: AB 1335 (Atkins), a similar bill that failed to advance from the Assembly in the 2015-16 Session, would have imposed a $75 fee on the recording of real estate documents associated with each single transaction per parcel of real property, except those recorded in connection with a transfer subject to a documentary transfer tax, for specified affordable housing purposes.

SB 391 (DeSaulnier), a similar bill that was held on the Assembly Appropriations Committee's Suspense File in 2013, would have imposed a $75 fee on the recording of each real estate-related document, except those recorded in connection with a transfer subject to a documentary transfer tax, for specified affordable housing purposes.

SB 1220 (DeSaulnier), a similar bill that failed passage on the Senate Floor in 2012, would have imposed a $75 fee on the recording of each real estate-related document, except those recorded in connection with a transfer subject to a documentary transfer tax, for specified affordable housing purposes.

Staff Comments: HCD estimates that revenues from a $75 per document recording fee on the specified real estate related documents would generate approximately $229 million to $258 million annually, based on projections of expected document recordation volumes. This figure could be lower to the extent that a single transaction would have more than three recorded documents subject to the fee, since the bill contains a $225 cap. These estimates could be significantly lower or higher, depending on economic conditions that may affect the actual volume and types of real estate transactions subject to the fee.

HCD and CalHFA, the likely administrators of the housing programs to be funded by this measure, have historically maintained administrative costs at 5% or less of the funding allocated for existing state-administered housing programs. This bill continues this practice by explicitly authorizing state or local entities that receive an appropriation or allocation of funds to use no more than 5% of the funds for costs related to the administration of the housing program for which the appropriation or allocation was made. At the 5% level, state administrative costs would be up to $5 million annually for every $100 million appropriated from the CHJ Trust Fund. A larger proportion of the available funds would be associated with structuring any new programs or revising existing programs to accommodate the priorities specified in the bill, depending on the outcomes identified in the Building Homes and Jobs Investment Strategy. Any decisions related to position authority at HCD and CalHFA and other operations costs would occur as part of the annual budget process.

The bill establishes a new 15-member governing board to oversee the development of the investment strategy, and review and approve HCD's recommendations for the

distribution of all BHJ Trust Fund revenues. Considering the public process required prior to HCD submitting the investment strategy to the Legislature, the oversight related to funding decisions provided by the Governor and Legislature in the annual budget process, and the periodic audits performed by the State Auditor, the Committee may wish to consider whether the creation of a new governing board is necessary.

Under the Joint Rules of the Senate and Assembly, Rule 37.4 (b) specifies that "any bill requiring action by the Bureau of State Audits shall contain an appropriation for the cost of any study or audit." SB 2 requires periodic audits by the State Auditor, but does not provide funding to cover audit costs. The bill should be amended to explicitly require that funding be provided to the State Auditor through an appropriation from the CHJ Trust Fund in the Budget Act (see recommended amendment below).

Staff notes that this bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIIIA of the California Constitution, and would thus require the approval of 2/3 of the membership of each house of the Legislature for passage. Prior to 2010, specified fees could be enacted by majority vote, but this authority was significantly limited by Proposition 26 (2010).

Recommended Amendments: The bill should be amended to provide funding for the mandatory periodic CSA audits to comply with Joint Rule 37.4 (b).

-- END --

ASSOCIATION OF BAY AREA GOVERNMENTS
Representing City and County Governments of the San Francisco Bay Area

ABAG

March 17, 2017

The Honorable Jim Beall
Chair, Senate Transportation and Housing Committee
State Capitol, Room 2209
Sacramento, CA 95814

Re: Support of SB 3 (Beall) – Affordable Housing Bond Act

Dear Senator Beall:

On behalf of the Association of Bay Area Governments, I am writing to share our support for your bill, SB 3, which would authorize a $3 billion statewide housing bond, subject to voter approval. Similar to Propositions 46 (2002) and 1C (2006), bond proceeds would be allocated to existing affordable housing rental and homeownership programs as well as support infill development projects.

The Bay Area's housing challenges are inextricably linked to the location of jobs and transit. Since 2010, the region has added 500,000 jobs but only 50,000 housing units, creating the most expensive housing market in the country. At the same time, steep cuts to state and federal affordable housing programs have limited the ability of public agencies to meet the growing needs of low-and moderate income households. Residents priced out by the housing market are moving further away from job centers, contributing to record levels of freeway congestion and crowding on regional transit systems. SB 3 would assist the region in meeting the daunting need for new housing through increasing state investment in existing affordable housing programs.

If you wish further information on our position, please contact Brad Paul, Acting Executive Director, at 415/820-7955.

Sincerely,

Julie Pierce
ABAG President and City of Clayton Councilmember

cc: Senate Government and Finance Committee
Matthew Montgomery, Legislative Director, Office of Senator Mike McGuire
Scott Haggerty, ABAG L&GO Committee Chair and Alameda County Supervisor
Michael Arnold, Arnold and Associates

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February 27, 2017

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The Honorable Jim Beall
Chair, Senate Transportation and Housing Committee
State Capitol, Room 2082
Sacramento, CA 95814

Re: SB 3 (Beall): Affordable Housing Bond Act of 2018
As introduced on December 5, 2016 – SUPPORT
Set for hearing on February 28, 2017 – Senate Transportation & Housing Committee

Dear Senator Beall:

The California State Association of Counties (CSAC) supports your Senate Bill 3, which would provide $3 billion to fund affordable housing programs via a statewide general obligation bond. Specifically, the bill would allocate the bond revenues to six existing state affordable housing programs as follows: $1.5 billion to the Multifamily Housing Program, $300 million to the CalHome Program, $300 million to the Joe Serna, Jr. Farmworker Housing Program, $300 million to the Local Housing Trust Fund Matching Grant Program, $200 million to the Transit-Oriented Development Program, $300 million to the Infill Infrastructure Financing Program, and $100 million to the existing Building Equity and Growth in Neighborhoods Program. Counties are eligible to participate in all of the programs proposed for funding under SB 3, either as individual applicants or as joint applicants with non-profit or for-profit housing developers.

CSAC understands that safe, clean and decent housing that is affordable to all income levels is essential to the health, safety and prosperity of all Californians and that the state is reaching a crisis point regarding both the availability of housing and its affordability. It is imperative that the state take advantage of low interest rates and make further investments in the development of affordable homes. In addition to the direct benefit of new, much-needed housing for Californians, counties will benefit from the direct and indirect economic activity, estimated at $24.5 billion, and the additional local and state tax revenues, estimated at $1.1 billion, that this housing bond will generate.

For these reasons, CSAC supports SB 3. Should you have any questions regarding our position, please do not hesitate to contact Chris Lee at 916-327-7500, ext. 521, or clee@counties.org.

Sincerely,

DeAnn Baker
Deputy Executive Director, Legislative Affairs

cc: Members and Consultants, Senate Transportation & Housing Committee
Doug Yoakam, Senate Republican Caucus

1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

March 16, 2017

The Honorable Mike McGuire
Chair, Senate Governance and Finance
State Capitol, Room 5061
Sacramento, CA 95814

Re: SB 3 (Beall) – Affordable Housing Bond Act of 2018
NOTICE OF SUPPORT

Dear Senator McGuire,

The League of California Cities is pleased to offer its strong support for SB 3, the Affordable Housing Bond Act of 2018, which authorizes a $3 billion general obligation bond to fund affordable housing programs and infill infrastructure projects.

The League of California Cities has made addressing housing affordability a top priority this year, and it applauds the author for legislation that recognizes the scale of the housing affordability challenge and the important role the state must play in finding critically needed funding to help spur housing construction.

Many factors have contributed to the lack of supply and the high cost of housing statewide, especially in coastal regions where the technology sector has experienced booming high-wage job growth. A major contributor to the problem has been the elimination of redevelopment agencies, which resulted in an annual loss of $1 billion for affordable housing. Additionally, proceeds from the last state housing bond, passed a decade ago, have been expended, and other state and federal funding sources, except for modest amounts of tax credits, have slowly eroded or have been discontinued. In fact, federal investments in critical housing programs have been slashed 50-77% from 2005 to 2015.

The lack of construction in the private housing market has resulted in increasing rents and home prices well above the national average, while also playing a role in the state's homeless population climbing to 116,000 after years of progress. SB 3 would help mitigate these problems by infusing $3 billion into the affordable housing market.

We appreciate the author's leadership on this critical issue and look forward to working with you and others to pass this measure. If you have any questions, or if I can be of any assistance, please call me at (916) 658-8264.

Sincerely,

Jason Rhine
Legislative Representative

Cc: Members, Senate Governance and Finance Committee
Colin Grinnell, Staff Director, Senate Governance and Finance Committee
Ryan Eisberg, Consultant, Senate Republican Caucus

SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2017 - 2018 Regular Session

SB 3 (Beall) - Affordable Housing Bond Act of 2018

Version: March 28, 2017
Urgency: Yes
Hearing Date: April 3, 2017
Policy Vote: T & H 10 - 2, GOV & F 5 - 2
Mandate: No
Consultant: Mark McKenzie

This bill meets the criteria for referral to the Suspense File.

Bill Summary: SB 3, an urgency measure, would enact the Affordable Housing Bond Act of 2018, which authorizes the sale of $3 billion in general obligation bonds, upon approval by voters at the November 6, 2018 statewide general election.

Fiscal Impact:

- Bond costs: Total principal and interest costs of approximately $5.14 billion to pay off the bonds ($3 billion in principal and $2.14 billion in interest), with average annual debt service payments of $171 million (General Fund), when all bonds are sold, and assuming a 30-year maturity and an interest rate of 3.9% (the rate secured by the Treasurer for new 30-year bonds at the most recent sale). If interest rates increase to 5% in the near future, annual debt service would be approximately $195 million (General Fund) and total principal and interest costs over the repayment period would be approximately $5.86 billion.

- Administrative costs: The Department of Housing and Community Development (HCD) and the California Housing Finance Agency (CHFA) would incur significant increased staffing and operations costs to administer the various housing programs funded by this Bond Act (Affordable Housing Bond Act Trust Fund of 2018). The measure authorizes up to 5% of bond proceeds, or up to $150 million in total, to be used for administrative purposes. HCD indicates that actual administrative costs would likely exceed this cap, which could create additional General Fund cost pressures to the extent those additional resources are approved in future budget acts. See staff comments.

- Ballot costs: One-time costs in the range of $414,000 to $552,000 to the Secretary of State (SOS) for printing and mailing costs to place the measure on the ballot in the November, 2018 statewide election. (General Fund)

Background: Existing law, as enacted by SB 1227 (Burton), Chapter 26/2002, establishes the Housing and Emergency Shelter Trust Fund Act of 2002, authorizing the sale of $2.1 billion in general obligation bonds for various affordable housing programs, upon approval by the voters. Subsequently, the 2002 Act was approved by the voters as Proposition 46 in the November, 2002 general election. According to HCD, Proposition 46 assisted in the construction of 91,000 units of housing, including 10,000 shelter spaces.

Existing law, as enacted by SB 1689 (Perata), Chapter 27/2006, establishes the Housing and Emergency Shelter Trust Fund Act of 2006, authorizing the sale of $2.85

billion in general obligation bonds for various affordable housing programs, upon approval by the voters. Subsequently, the 2006 Act was approved by the voters as Proposition 1C at the November, 2006 general election. HCD indicates that 92,000 housing units and 3,000 shelter spaces have been constructed with Proposition 1C bond funds. According to the Governor's bond accountability website, approximately $279,000 in Proposition 1C funds remain uncommitted.

In the 2009-10 fiscal year, $1.075 billion of redevelopment property tax increment revenues were set aside for affordable housing. As part of a General Fund solution in the 2011-12 budget, however, ABx1 26 (Blumenfield) was enacted to eliminate redevelopment agencies and the associated tax increment revenues that had been a significant and ongoing source of affordable housing funds.

Proposed Law: SB 3, an urgency measure, enacts the Affordable Housing Bond Act of 2018, which places a $3 billion general obligation bond on the November 6, 2018 general election ballot. The measure creates the Affordable Housing Bond Act Trust Fund of 2018 (Fund), and states the Legislature's intent that all bond proceeds be deposited in the Fund. The bill allocates funds from the Fund to the following accounts, when the bonds are issued and sold:

- $1.5 billion to the Multifamily Housing Account, which the bill creates within the Fund. Upon appropriation by the Legislature, these funds would be available for use in the existing Multifamily Housing Program to construct, rehabilitate, and preserve permanent and transitional housing for persons with incomes of up to 60% of the area median income.
- $600 million to the Transit-Oriented Development and Infill Infrastructure Account, which the bill creates within the Fund, for the following purposes:
    - $200 million for deposit into the Transit-Oriented Development Implementation Fund, upon appropriation by the Legislature, for purposes specified in the existing Transit-Oriented Development Implementation Program.
    - $300 million for deposit into the Infill Infrastructure Financing Account, which the bill creates within the Fund, upon appropriation by the Legislature, for infill incentive grants to assist in the new construction or rehabilitation of infrastructure that supports high-density affordable and mixed-income housing in locations designated as infill, pursuant to the Infill Incentive Grant Program of 2007.
    - $100 million for deposit into the existing Building Equity and Growth in Neighborhoods (BEGIN) Program Fund, upon appropriation by the Legislature, to make grants to qualifying local agencies to provide downpayment assistance for use by qualifying first-time homebuyers or low- and moderate-income buyers purchasing newly constructed homes.
- $600 million to the Special Populations Housing Account, which the bill creates within the Fund. The bill then allocates funds from the Account as follows:
    - $300 million for deposit into the existing Joe Serna, Jr. Farmworker Housing Grant Fund. Upon appropriation by the Legislature, these funds would be used for grants and/or loans to specified entities for construction and rehabilitation of housing for agricultural employees and their families, or for the acquisition of manufactured housing for specified purposes.

  - $300 million for deposit into the Local Housing Trust Fund Matching Grant Program Account, which the bill creates within the Fund. Upon appropriation by the Legislature, these funds would be available to provide matching grants to local public agencies and nonprofit organizations that raise money for affordable housing, as specified by existing statute.
- $300 million to the Home Ownership Development Account, which the bill creates within the Fund. Upon appropriation by the Legislature, these funds would be available for the existing CalHome Program to provide direct, forgivable loans to assist development projects involving multiple ownership units, including single-family subdivisions, for self-help mortgage assistance programs, and for manufactured homes.

The bill also authorizes HCD to provide technical assistance for eligible cities or counties, or affordable housing developers within eligible jurisdictions, to facilitate the construction of housing for targeted populations through the Multifamily Housing Program, the Joe Serna Jr, Farmworker Housing Grant Program, and the CalHome Program, as specified. HCD may only provide a maximum of $360,000 in total technical assistance, and an eligible city or county may not receive more than $30,000 in technical assistance in a given year.

The measure only takes effect if enacted by voters at the November 6, 2018 statewide general election, makes legislative findings and declarations supporting its provisions, and contains an urgency clause giving the measure immediate effect if enacted.

Related Legislation: SB 3 (Atkins), an urgency measure that is also scheduled for hearing in this Committee, would impose a fee of $75 on the recording of real estate documents (up to a maximum of $225 per transaction), except those recorded in connection with a property transfer, as specified, and dedicate revenues for affordable housing purposes, upon appropriation by the Legislature.

SB 879 (Beall), which failed to advance from the Assembly Floor last year, would have authorized the sale of $3 billion in general obligation bonds for affordable housing purposes, upon approval by the voters at the November 6, 2016 general election.

Three other general obligation bond proposals have been introduced in the Senate this year:

- SB 5 (De Leon), The California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018.

- SB 4 (Mendoza), The Goods Movement and Clean Trucks Bond Act.

- SB 483 (Glazer), The Higher Education Facilities Bond Act of 2018.

Staff Comments: The State Treasurer recently sold nearly $2.8 billion in general obligation bonds (including refinancing $2.28 billion in existing bond debt), and indicated that the sale was a success, considering recent interest rate increases. The yield on new 30-year bonds sold on March 9, 2017 was 3.9%. The estimates noted above assume equivalent rates, but also note the difference in debt service costs if the rate rose to historical averages of 5%.

HCD estimates a need for six PY of new staff and $1.2 million in 2018-19, 49 PY of staff and $10 million in 2019-20, and 91 PY of staff and approximately $19.6 million in 2020-21 and ongoing to administer the programs funded with the proceeds of this Bond Act. Staff notes that this level of funding would exceed the 5% cap on using the bond proceeds for administrative purposes. Any decisions related to position authority and other operations costs would occur as part of the annual budget process.

SOS indicates that printing and mailing costs associated with placing a measure on the statewide ballot are approximately $69,000 per page, depending on the length of the ballot. The fiscal estimates noted above reflect the addition of 6-8 pages in the Voter Information Guide. Actual costs would depend upon the length of the title and summary, analysis by the Legislative Analyst's Office, proponent and opponent arguments, and text of the proposal. Staff notes that Proposition 1C took up 8 pages in the 2006 Voter Information Guide.

-- END --

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February 27, 2017

The Honorable Scott Wiener
California State Senate
State Capitol Building, Room 4066
Sacramento, CA 95814

RE: <u>SB 35 (Wiener) Affordable Housing: Streamlined Approval Process.</u>
Notice of Opposition *(as amended 2/21/17)*

Dear Senator Wiener:

The League of California Cities respectfully requests that you pull your SB 35 (Wiener) from the February 28, 2017 Senate Transportation and Housing Committee agenda. SB 35 was a "spot bill" until just days ago, and should not be hurried through the legislative process given that there are more than two months before the first policy committee deadlines.

Additionally, as the committee analysis clearly highlights, major work is still needed to be done on this measure. The League of California Cities strongly urges you and members of the committee to grant additional time to resolve outstanding issues, and stands ready to work with you and all relevant stakeholders throughout this process.

Absent rescheduling SB 35 for a future committee hearing, the League of California Cities must oppose your measure, which would pre-empt local discretionary land use authority by making approvals of multifamily developments and accessory dwelling units (ADUs), that meet inadequate criteria, "ministerial" actions. Like the flawed By-Right proposal from last year, this measure would rely on often outdated community plans and would compromise critical project level environmental review, public input, and community integrity.

The League of California Cities agrees that California is facing a housing supply and affordability crisis. In fact, one the League's four strategic goals for 2017 is focused on improving the affordability of workforce housing and securing additional funds for affordable housing. Unfortunately, SB 35 as currently drafted is not the balanced proposal that is needed to provide meaningful relief from soaring home prices.

SB 35 is purported to be a response to the state's needs for market rate and affordable housing, however it sidesteps the reality that state and federal affordable housing funding have slowed to a trickle. More than $1 billion annually in affordable housing money has evaporated with the elimination of redevelopment agencies in 2011. Funds from the 2006 state housing bond have been exhausted and federal dollars have been declining for decades. This massive withdraw of resources has contributed to the current challenges, yet no significant source of ongoing affordable housing funding is on the horizon.

Eliminating opportunities for public review of major multifamily developments goes against the principles of local democracy and public engagement. Public hearings allow members of the

community to inform their representative of their support or concerns. “Streamlining” in the context of SB 35 appears to mean a shortcut around public input. While it may be frustrating for some developers to address neighborhood concerns about traffic, parking and other development impacts, those directly affected by such projects have a right to be heard. Public engagement also often leads to better projects. Not having such outlets will increase public distrust in government and additional ballot measures dealing with growth management.

SB 35 would also undermine state environmental law and processes. While these laws have their critics and issues, most would acknowledge that they have made enormous contributions to the environment and quality of life. If there are issues with these laws then they must be addressed, not ignored with preference to work around the edges. Many laws related to housing planning and approvals are already on the books. The Housing Accountability Act requires local governments to approve affordable housing projects with very limited exceptions. Local governments cannot deny housing projects just because residents object to the proposal.

This proposal also does not recognize the challenges many locals face in offsetting the costs of serving residents of new housing, including the need to address local parking issues.

The League of California Cities is supporting various legislative efforts this year to develop and restore affordable housing funding, and to streamline housing approvals without undermining important environmental review and public engagement. Proposals include SB 2 (Atkins), which would charge new fees on real estate documents, SB 3 (Beall), which would authorize a $3 billion general obligation housing bond, and SB 540 (Roth), which would streamline housing project approvals by developing up-front specific plans and conducting all associated environmental studies on areas designated by local governments.

While the League commends you for being a strong affordable housing advocate, SB 35 currently falls short. The League is committed to working with you and others on finding comprehensive solutions to the housing supply and affordability crisis gripping many areas of the state. However, in its present form, the League must oppose SB 35. If you have any questions, please do not hesitate to contact me at (916) 658-8264.

Sincerely,

Jason Rhine
Legislative Representative

cc:

Chair and Members, Senate Transportation and Housing Committee
Alison Hughes, Consultant, Senate Transportation and Housing Committee
Doug Yoakam, Consultant, Senate Republican Caucus

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

Bill No:	SB 35	**Hearing Date:**	3/7/2017
Author:	Wiener		
Version:	2/21/2017		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alison Hughes		

SUBJECT: Planning and Zoning: affordable housing: streamlined approval process

DIGEST: This bill creates a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment numbers.

ANALYSIS:

Existing law:

1) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.

2) Requires the board of zoning adjustment or zoning administrator to hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance.

3) Requires cities and counties, to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.

4) Requires the housing element to identify adequate sites for housing, including rental housing, factory-built housing, mobile homes, and emergency shelters and to make adequate provision for the existing and projected needs of all economic segments of the community.

5) Requires cities and counties within the territory of a metropolitan planning organization (MPO) to revise their housing elements every eight years following the adoption of every other regional transportation plan. Cities and counties in rural non-MPO regions must revise their housing elements every five years.

This bill:

1) Requires a city, including a charter city, county, or city and county, on or before April 1, 2018, and on or before April 1 each year thereafter, to submit a report to HCD that includes the following:
   a) The number of units of housing that have completed construction in the housing element cycle, and
   b) The income category, including very low income, low-income, moderate-income, and above moderate income, for which each unit of housing satisfies.

2) Creates a streamlined, ministerial approval process for housing developments that meet the following criteria:
   a) The development is an accessory dwelling unit or a multifamily housing development that contains two or more residential units.
   b) The development is located on a site that satisfies both of the following: is an urban infill site and is zoned for residential use or residential mixed use development.
   c) If the development contains units that are subsidized, rental units shall remain subsidized for 55 years if rented and 45 years if owned.
   d) The development satisfies both of the following:
      i. Is located in a locality that, according to its annual production report to HCD, completed construction of fewer units by income category than was required for the RHNA for that year.
      ii. The development is subject to a requirement mandating a minimum percentage of below market rate housing based on the following:
         - The locality constructed fewer units of above moderate income housing than was required for the RHNA for that year and dedicates an unspecified percentage of the total number of units to below market rate housing, unless the locality has adopted a local inclusionary zoning ordinance that requires that greater than an unspecified percentage of the units dedicated to below market rate housing, in which case the inclusionary zoning ordinance applies.
         - The locality constructed fewer units of very low, low- or moderate-income housing than was required for the RHNA

cycle for that year, and dedicates an unspecified percentage of the total number of units to below market rate housing, unless the locality has adopted a local inclusionary zoning ordinance that requires that greater than an unspecified percentage of the units be dedicated to below market rate housing, in which case that inclusionary zoning ordinance applies.

a) The development is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government.
b) The development is not located on a site that is any of the following: a coastal zone, prime farmland or farmland of statewide importance, wetlands, or a hazardous waste site. The development shall also not be within: a very high fire hazard severity zone, delineated earthquake fault zone, flood plain, or floodway.
c) The development does not require the demolition of the following: housing that is subject to rent control, housing that is subject to deed restrictions, housing that has been occupied by residents within the past 10 years, or a historic structure that was placed on a national, state, or local historic register prior to December 31, 2016.
d) The development shall be subject to enforceable wage requirements.

3) If the locality determines that a development submitted pursuant to this bill is in conflict with any of the objective planning standards specified above, it shall provide the development proponent with written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, as follows:
   a) Within 60 days of submittal of the development to the local government if the development contains 150 or fewer housing units.
   b) Within 90 days of submittal of the development to the local government if the development contains more than 150 housing units.
   c) If the locality fails to provide the required documentation according to the above timelines, the development shall be deemed to satisfy the objective planning standards as required under this bill.

4) Any design review of the development shall not in any way inhibit, chill or preclude the ministerial approval shall be completed as follows:
   a) Within 90 days of submittal of the development to the local government if the development contains 150 or fewer housing units.
   b) Within 180 days of submittal of the development to the local government if the development contains more than 150 housing units.

5) A development approved pursuant to this section shall not be subject to any local or state parking minimum requirements.

COMMENTS:

1) *Purpose.* According to the author, for decades, California has failed to create enough housing, at all income levels, for our growing population. We have placed endless barriers in the way of new housing. According to the Legislative Analyst, California needs to produce approximately 180,000 units of housing per year to keep up with population growth – right now; we produce less than half that amount. The extreme cost of housing in many parts of California is harming our economy, our environment, and the health and quality of life of far too many people. When we don't have enough housing, low income and middle income residents are hit the hardest, with increased evictions and an inability to find suitable housing. While there are various reasons for this shortage, including zoning restrictions, one aspect of the problem is the significant length of time it takes to approve housing even if the project is entirely within zoning. It should not take years to approve a zoning-compliant housing development.

   SB 35 will result in more housing at all income levels, good-paying jobs to build that housing, and more accountability in creating the new homes our residents so badly need. Under SB 35, if cities aren't on track to meet their RHNA goals, then approval of zoning-compliant projects will be streamlined, if they meet objective zoning, affordability, and environmental criteria, and if the projects pay prevailing wage. Under SB 35, all cities and counties are required to submit their progress on housing production to the California Department of Housing and Community Development, and HCD is required to make that data easily available to the public. Indeed, many cities aren't even required to report their progress to the state, and the state doesn't do a great job reporting out statewide RHNA progress. In combination with other bills pending in the Legislature - particularly affordable housing funding bills and bills to require better compliance with Housing Element requirements - SB 35 will help create more housing for people of all income levels. It deserves our support.

2) *Housing needs and approvals generally*. Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. The land use element sets a

community's goals on the most fundamental planning issues—such as the distribution of uses throughout a community, as well as population and building densities—while other elements address more specific topics. Communities also may include elements addressing other topics—such as economic development, public facilities, and parks—at their discretion.

Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

Each community's fair share of housing is determined through a process known as Regional Housing Needs Allocation (RHNA). The RHNA process has three main steps: 1) Department of Finance and HCD develop regional housing needs estimates; 2) regional councils of governments allocate housing within each region; and 3) cities and counties incorporate their allocations into their housing elements.

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors.

Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to CEQA review, while projects permitted ministerially generally are not.

3) *The Governor's 2016 "by-right proposal."* In May 2016, the Governor introduced trailer bill language designed to streamline approval processes by broadening eligibility for by-right, ministerial land use approvals for

multifamily infill housing developments that include affordable housing. Specifically, that proposal applied to projects that were within a "transit priority area" (defined as within ½ a mile of a major transit stop) and had at least 10% of units reserved for low-income households or 5% of units reserved for very low-income households. It also applied to projects that are not in a "transit priority area," in which at least 20% of the units are reserved for individuals making less than 80% of the area median income. A local government may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval for qualifying developments that include one of the affordable housing components noted above, provided they are consistent with objective general plan and zoning standards and are, where applicable, subject to mitigating measures to address potential environmental harm.

The Governor's proposal sought to address California's housing supply problem by expediting approval processes at the local level for predominately market rate housing developments. Given that this proposal was limited to infill development; it is likely that these expedited approvals would have taken place in more urban and coastal regions where the housing demand is particularly acute. This solution, which focuses on increasing market rate units, also referred to as "filtering," assumes that, over time, older market-rate housing becomes more affordable as new units are added to the market, and is the most effective way to exit the affordable housing crisis. Unfortunately, the filtering process can take generations, meaning that units may not filter at a rate that meets needs at the market's peak, and the property may deteriorate too much to be habitable. Further, prioritizing market rate housing development could be built to the exclusion of construction of more housing that is affordable to low- and moderate-income renters and homeowners. While many jurisdictions have not met their housing needs for any income level, generally the rate of production of units affordable to lower-income renters is significantly less than that of market rate units.

4) *Creating streamlined approvals for infill projects*. This bill creates a streamlined approval process for infill projects with two or more residential units or for ADUs in localities that have failed to produce sufficient housing to meet their RHNA numbers. This streamlined approval process may be triggered in two circumstances: 1) If the locality constructed fewer units of above moderate income housing than was required for the RHNA for that year and the development dedicates an unspecified percentage of the total number of units to below market rate housing, unless the locality has adopted a local inclusionary zoning ordinance that requires that greater than an unspecified percentage of the units dedicated to below market rate housing, in which case

the inclusionary zoning ordinance applies; and 2) The locality constructed fewer units of very low, low- or moderate-income housing than was required for the RHNA cycle for that year, and dedicates an unspecified percentage of the total number of units to below market rate housing, unless the locality has adopted a local inclusionary zoning ordinance that requires that greater than an unspecified percentage of the units be dedicated to below market rate housing, in which case that inclusionary zoning ordinance applies.

The author has committed to working with the affordable housing community to identify appropriate affordability percentages in projects that qualify for ministerial approval under this bill, particularly in jurisdictions that fail to meet their RHNA obligations for lower-income renters.

5) *Reporting Requirements.* This bill requires localities to report annually to HCD on the number of units of housing that have completed construction in the housing element cycle, and the income category, including very low income, low-income, moderate-income, and above moderate income, for which each unit of housing satisfies. The author's intent is to add new requirements to an existing annual report found in Government Code Section 65400; however this intent is not clear from the current language. Further, local governments who look to the existing code section may not see that this new requirement was added in a different code section.

Going forward, the author may wish to consider referencing Government Code Section 65400 in the bill, and amend Government Code Section 65400 to include the new requirements in this bill.

6) Opposition. The League of California Cities states that major work is still needed to be done on this measure, given that the bill was a spot bill until February 21st. The League of California Cities also opposes this measure because it would pre-empt local discretionary land use authority by making approvals of multifamily developments and ADUs ministerial actions. This proposal would rely on outdated community plans and would compromise project level environmental review, public input, and community integrity.

7) *Double-referral.* This bill was referred to this committee and the Senate Governance and Finance Committee.

RELATED LEGISLATION:

Trailer Bill 707 (Governor's Budget, 2016) —would have permitted ministerial "by-right" land use approvals for multifamily infill housing developments that include affordable housing units. This proposal was tied to a $400 million general fund allocation to be used for affordable housing as proposed by the Legislature. The trailer bill language faced significant opposition and therefore an agreement on this proposal and a funding allocation could not be reached.

AB 2522 (Bloom, 2016) —would have exempted a housing development that includes either 20% low-income units or 100% moderate-income units and middle-income units from a conditional use permit, a planned unit development permit, or project level CEQA review. The bill hearing in Assembly Housing and Community Development was canceled at the request of the author.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, March 1, 2017.)

SUPPORT:

Abundant Housing LA
California Renters Legal Advocacy and Education Fund
East Bay Forward
Grow the Richmond
Progress Noe Valley
San Francisco Chamber of Commerce
San Francisco Housing Action Coalition
San Francisco YIMBY Party
Silicon Valley Leadership Group
YIMBY Action

OPPOSITION:

City of Santa Rosa
Koreatown Immigrant Workers Alliance
League of California Cities
Marin County Council of Mayors and Councilmembers

-- END --

AMENDED IN ASSEMBLY MARCH 28, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 1423

Introduced by Assembly Member Chiu

February 17, 2017

An act *to amend Section 65700 of the Government Code,* relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1423, as amended, Chiu. ~~Housing: data.~~ *Housing: annual reports: charter cities.*

The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law ~~provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing.~~ *requires the planning agency of a city or county, after the adoption of a general plan, to investigate and make recommendations to the legislative body of the city or county regarding reasonable and practical means for implementing the general plan or element of the general plan and to provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes, among other things, the status of the plan and progress in its implementation and the progress in meeting its share of regional housing needs, as specified, and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing, as specified. Existing law excludes a charter city from these investigation, recommendation, and report requirements.*

This bill would apply the above report requirement to charter cities. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This bill would declare the intent of the Legislature to enact legislation that would fund measures to provide for accessible housing-related data and would make legislative findings and declarations in support of that intent.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. Section 65700 of the Government Code is amended to read:

65700. (a) ~~The provisions of this~~ *This* chapter shall not apply to a charter city, except to the extent that the same may be adopted by charter or ordinance of the ~~city;~~ *city and* except that charter cities shall adopt general plans in any ~~case, and such~~ *case. General* plans *of a charter city* shall be adopted by resolution of the legislative body of the city, or the planning commission if the charter so ~~provides, and such~~ *provides. These general* plans shall contain the mandatory elements required by Article 5 (commencing with Section 65300) of Chapter 3 of this title.

(b) Notwithstanding subdivision (a), ~~the provisions of~~ *paragraph (2) of subdivision (a) of Section 65400 and* Sections 65590 and 65590.1 shall be applicable to charter cities.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

~~SECTION 1. (a) It is the intent of the Legislature to enact legislation that would fund measures to provide for accessible housing-related data.~~

~~(b) In support of subdivision (a), the Legislature finds and declares that it is critical that the state have comprehensive and accessible housing-related data from cities and counties in order to support all of the following:~~

~~(1) Evidence-based policy decisionmaking at the federal, state, regional, and local level.~~

~~(2) Regulatory enforcement of housing-related law by federal and state governmental entities, including, but not limited to, the United States Department of Housing and Urban Development's Affirmatively Furthering Fair Housing Rule and the housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code) administered by the Department of Housing and Community Development.~~

~~(3) Litigation enforcement of housing-related law, especially related to systemic housing discrimination.~~

~~(4) The public, advocates, the press, researchers, and other government stakeholders with information to better understand the drivers and solutions to our state's housing and affordability crisis.~~

~~(5) Affordable and market rate developers by providing information to inform development decisions.~~

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ASSOCIATION OF BAY AREA GOVERNMENTS
Representing City and County Governments of the San Francisco Bay Area

ABAG

March 17, 2017

The Honorable Senator Mike McGuire, Chair
State Capitol
1303 10th Street, Room 5064
Sacramento, CA 95814

Re: Support of SB 564 (McGuire) – Joint powers authorities: Water Bill Savings Act

Dear Senator McGuire:

On behalf of the Association of Bay Area Governments, I am writing to express our support for SB 564 - the Water Bill Savings Act.

The State of California needs more models for customers to reduce water use, greenhouse gas emissions, and the cost of utility service while improving aging buildings. We believe that everyone – renters and low income residents – should be able to benefit from efficiency and that customers are more likely to invest in efficiency if there are tools for them to receive measures at no up-front cost. We also believe that widespread water efficiency is necessary to prepare our communities for the ongoing and future drought pressures forecast for the State.

Your proposal to allow pooled bond finance for customer resource efficiency extends customary local government levers available for water projects to efficiency, an essential water resource. The ability to repay these bonds with customer efficiency charges enables those receiving the benefit of reduced bills to pay for efficiency, and create benefits to the water system at scale. Moreover, your proposal is an appropriate response to the Governor's Executive Order (B-37-16) to make Water Conservation a Way of Life, and to "transition to permanent, long-term improvements in water use efficiency."

The Water Bill Savings Act will allow for a regionally efficient, financially sustainable model to achieve water efficiency that is available to all municipal utilities, large and small. Thank you for your leadership on this critically important issue.

If you wish further information on our position, please contact Brad Paul, Acting Executive Director, at 415/820-7955.

Sincerely,

Julie Pierce
ABAG President and City of Clayton Councilmember

cc: Senate Government and Finance Committee
Matthew Montgomery, Legislative Director, Office of Senator Mike McGuire
Scott Haggerty, ABAG L&GO Committee Chair and Alameda County Supervisor
Michael Arnold, Arnold and Associates

Mailing Address: P.O. Box 2050 Oakland, California 94604-2050 (510) 464-7900 Fax: (510) 464-7970
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Joseph P. Bort MetroCenter 101 Eighth Street Oakland, California 94607-4756

SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2017 - 2018 Regular

Bill No:	SB 564	**Hearing Date:**	4/5/17
Author:	McGuire	**Tax Levy:**	No
Version:	2/17/17	**Fiscal:**	No
Consultant:	Favorini-Csorba		

JOINT POWERS AUTHORITIES: WATER BILL SAVINGS ACT

Enacts the Water Bill Savings Act, which allows joint powers authorities to finance water conservation improvements to private property paid for by charges collected through water bills.

Background

Property assessed clean energy (PACE) financing programs offer government loans to private property owners to cover the initial costs of renewable energy, energy efficiency, and water efficiency improvements. Property owners repay the loans through voluntary annual assessments or parcel taxes, which are secured by priority liens, on their property tax bills. With the free and willing consent of affected property owners, state law lets public agencies use voluntary contractual assessments or parcel taxes to finance water efficiency improvements that are permanently fixed to real property (AB 474, Blumenfield, 2009 and SB 555, Hancock, 2011).

The Joint Exercise of Powers Act allows two or more public agencies to exercise their common powers by signing joint powers agreements. Sometimes an agreement creates a joint powers authority (JPA). The Marks-Roos Local Bond Pooling Act allows public agencies to use JPAs to finance infrastructure. These JPAs issue Marks-Roos Act bonds and loan the capital to local agencies for public works, for working capital, and for insurance programs. However, a JPA may not issue Marks-Roos Act bonds unless: (1) the JPA expects that the public works will be within a member agency's boundaries; (2) a member agency in whose boundaries the public works will be located holds a noticed public hearing and finds that the project is of "significant public benefit" to that agency's citizens, based on statutory criteria (SB 147, Kopp, 1998); and (3) notice is sent by certified mail at least five business days prior to the hearing to the Attorney General and to the California Debt and Investment Advisory Commission with specified contact information for the JPA.

Building upon the precedent set by PACE financing programs, some local officials want to be able to use charges that appear on a water customer's water bill to help finance renewable water efficiency improvements on private property. They want the Legislature to authorize a process by which water customers can voluntarily use public financing to install water efficiency improvements that will be repaid through water efficiency charge on their water bills. They also want the Legislature to authorize JPAs to issue bonds, pursuant to the Marks-Roos Act, to finance water efficiency improvements by pooling the voluntary water efficiency charges collected from participating water customers.

Proposed Law

Senate Bill 564 enacts the Water Bill Savings Act which, notwithstanding any other law, allows a JPA that meets specified requirements to provide funding for a customer of a local agency or its publicly owned utility to acquire, install, or repair a water efficiency improvement on a customer property served by the local agency or its publicly owned utility.

Establishing a financing program. To establish or extend a program to provide funding for a customer of a local agency or its publicly owned utility to acquire, install, or repair a water efficiency improvement on a customer property served by the local agency or its publicly owned utility, SB 564 requires a JPA to adopt a resolution that:

- State the intent to operate the program;
- Identifies the geographic area in which the JPA will operate the program, which are limited to only the territories where the retail water agency for the area has requested the JPA to run the program;
- Specify the types of efficiency improvements that may be financed by the program;
- Approves a standardized servicing agreement, and;
- Authorizes one or more designated officials of the JPA to execute and deliver the servicing agreement on behalf of the JPA.

SB 564 allows a JPA to make a final and conclusive determination that its proceedings to establish or extend a program were valid and in conformity with specified requirements enacted by the bill.

SB 564 allows the legislative body of a local agency to provide funding for its customers through a program established by a JPA by adopting a resolution of intention, conducting a noticed public hearing, and adopting a resolution to authorize the program. The resolution of intention must contain specified information about the public hearing and must make a specified declaration if the local agency wishes to pledge its water enterprise revenue as security for the payment of the bonds issued by a JPA in the event that efficiency charges are insufficient for those purposes. The resolution authorizing the establishment or extension of a program within a local agency's boundaries must:

- Authorize the JPA to operate the program within its boundaries;
- Declare that the operation of the program by the JPA in the local agency's geographic boundaries would provide significant public benefits in accordance with specified statutory criteria;
- Specify the types of efficiency improvements that may be financed by the program;
- Approve the standardized servicing agreement and authorize one or more designated officials of the local agency to execute and deliver the servicing agreement with the JPA;
- Approve, if applicable, the pledge of water enterprise revenue as security for the payment of the principal of, and interest and redemption premium on, bonds issued by the JPA in the event that efficiency charges are insufficient.
- Authorize, if applicable, execution and delivery of one or more pledge agreements to evidence a pledge.

SB 564 allows a local agency's legislative body, in the resolution, to make a final and conclusive determination that its proceedings to establish or extend a program were valid and in conformity with specified requirements enacted by the bill.

Efficiency charges. Senate Bill 564 requires a customer to repay the JPA for the costs of water efficiency improvements through an efficiency charge on the customer's water bill that is established and collected by the local agency or its publicly owned utility. The charge may only be established after verification that the efficiency improvement has been installed. The duty to pay the efficiency charge must arise from and be evidenced by a written agreement among the customer, the property owner of record (if different from the customer), the JPA, and the local agency or its publicly owned utility.

SB 564 requires the written agreement to include:

- An agreement by the customer to pay an efficiency charge for the period and in the amount specified in the agreement unless the efficiency charge is prepaid in the manner set forth in the agreement. The period designated for repayment must not exceed the estimated useful life of the funded efficiency improvements;
- A description of the financial calculation, formula, or other method that the JPA used to determine the efficiency charge. The efficiency charge may include a component for reasonable administrative expenses incurred by the local agency or its publicly owned utility and the JPA in connection with the program and the funding. Any reasonable administrative expenses must be listed separately;
- A description of the efficiency improvement funded with the efficiency charge. A determination in the agreement that an improvement is an efficiency improvement is final and conclusive;
- A representation by the customer that the customer intends to acquire, install, or repair and use the efficiency improvement on the customer's property for the useful life of the efficiency improvement. Any failure caused by damage, removal, or other fault of the customer does not affect the customer's obligation to pay the efficiency charge as set forth in the agreement;
- A requirement that any failure not caused by the customer results in the suspension of the charge until the improvement is repaired and returned to service. The JPA's decision on whether to repair and return the efficiency improvement to service is final and conclusive;
- A demonstration by the JPA that the customer's payment of the efficiency charge will be bill neutral, and;
- A provision that the obligation to pay the efficiency charge must appear in the terms through which a property that is not owner-occupied is leased to a customer.

The written agreement is not valid unless the JPA entering into the written agreement has verified all of the following information:

- The customer entering into the agreement is the utility customer at the address and that the customer has permission from the property owner of record, if different from the customer;
- The participating customer's account has been in good standing for the prior 12 months or the duration of the customer's occupancy of the site if less than 12 months;

- The person installing the efficiency improvement has been approved to install efficiency improvements by the JPA and the local agency or its publicly owned utility, and is in compliance with program requirements established by the JPA;
- The efficiency improvement complies with the program requirements established by the JPA and meets the definition of "efficiency improvement" contained in the bill, and;
- The efficiency improvement will generate total utility cost savings that exceed the total cost of the efficiency charge paid by the customer over the duration of the agreement, and will be bill neutral, as defined in the bill, for the participating customer.

SB 564 includes provisions governing the payment of the charge, specifically that:

- The timely and complete payment of an efficiency charge may be a condition of receiving water service from the local agency or its publicly owned utility;
- A local agency and its publicly owned utility are authorized to use their established collection policies and all rights and remedies provided by law to enforce payment and collection of the efficiency charge;
- A person liable for an efficiency charge is prohibited from withholding payment, in whole or in part, of the efficiency charge for any reason;
- A customer's obligation to pay the efficiency charge remain associated with the meter at the customer property on which the efficiency improvement is located until repaid in full or the charge has been transferred to a subsequent customer at the property, and;
- Unpaid efficiency charges do not transfer to new customers or property owners if the property is sold or transferred to a new customer and remain an obligation of the previous customer if the efficiency improvements were damaged or removed by the previous customer.

A local agency or its publicly owned utility must record a notice of an efficiency charge, containing specified information such as accurate payoff amounts and outstanding charges, in the records of the county recorder of the county in which the customer's property is located. This notice is to be considered sufficient notice to a subsequent customer of their obligation to pay the efficiency charge. The local agency or publicly owned utility must also record a notice of the removal of the charge within 10 days of the charges being fully paid off or of their decision to not restore an out-of-service efficiency improvement that failed due to reasons other than the fault of the customer. The JPA and the local agency or its publicly owned utility must also ensure that the recorded notice has up-to-date contact information for those entities, and when any person requests the amount of outstanding charges to determine the payoff amount, that amount shall be considered accurate for 45 days.

SB 564 contains a legislative finding and declaration that efficiency charges levied under the bill's provisions are not taxes, assessments, fees, or charges for the purposes of Articles XIII C and XIII D of the California Constitution because the charge is a voluntary charge based on the written agreement, and therefore the provisions of Articles XIII C and XIII D and Article 4.6 (commencing with Section 53750) of Chapter 4 of Part 1 of Division 2 of Title 5 are not applicable to those efficiency charges.

Bond issuance. SB 564 allows a JPA to issue bonds for the purpose of providing funds for the acquisition, installation, and repair of an efficiency improvement on customer property pursuant to the bill's provisions. The bill:

- Specifies information that a JPA issuing a bond must include in its preliminary notice and final report for the bonds submitted to the California Debt and Investment Advisory Commission.
- Allows a JPA to pledge one or more efficiency charges as security for the bonds.
- Allows a local agency to pledge water enterprise revenue as security for the payment of the principal of, and interest and redemption premium on, bonds issued by the JPA if the efficiency charges are insufficient for that purpose. The local agency may execute one or more pledge agreements, pursuant to state law, for the benefit of the JPA or for the exclusive benefit of the persons entitled to the financing costs to be paid from the efficiency charges.

SB 564 requires a JPA and a local agency or its publicly owned utility to enter into a servicing agreement for the collection of one or more efficiency charges and requires the local agency or its publicly owned utility to act as a servicing agent for purposes of collecting the efficiency charge. The bill imposes requirements on the handling of funds collected by a servicing agent and specifies provisions that must be included in a servicing agreement to help ensure the collection of efficiency charges and repayment of JPA debts.

Other provisions. SB 564 specifies the manner in which its provisions will continue to be enforced if a local agency for which bonds have been issued and remain outstanding ceases to operate a water utility, either directly or through its publicly owned utility.

SB 564 defines numerous terms that are used throughout the bill, including defining efficiency improvement to be a project that complies with the lists of eligible projects established by the Department of Water Resources for its CalConserve program, except that it cannot include living vegetation.

If a local agency, its publicly owned utility, and the JPA have complied with procedures specified in the bill, SB 564 exempts them from complying with the existing statutory requirements that JPAs must otherwise meet to issue bonds.

The bill also requires a JPA administering a program under the Act to compile and publicly post an annual report that includes information regarding the activities of the JPA and contractor oversight procedures.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. In response to the recent drought and growing concerns about the effects of climate change on California's long-term water supply, local governments are looking for ways to help their residents use less water. The initial installation costs of some types of water efficiency improvements like high-efficiency toilets or drip irrigation systems can deter property owners from making those improvements. The Legislature recently authorized so-called PACE programs, which allow local governments to offer property owner financing for water-efficiency improvements which are repaid through voluntary charges on their property tax bills. SB 564 builds on this precedent by providing local governments with a new tool to help promote the

widespread installation of water efficiency improvements on private property. The bill would allow JPAs to offer consumers competitive financing costs for these improvements by pooling the revenues generated by voluntary water efficiency charges paid by participating property owners. This new tool could help JPAs pay for regional responses to California's water supply challenges through the installation of improvements that will significantly reduce individual consumers' water use.

2. Need for the bill? Several other programs already exist to assist water customers in installing efficiency improvements. The PACE program was expanded in 2009 and 2011 to allow PACE financing of water improvements on private property, and the Department of Water Resources operates a revolving loan program to finance private water efficiency improvements. Local agencies also offer a variety of incentives for private efforts to conserve water, such as turf replacement programs and rebates for appliances and fixtures that consume less water. Other local agencies have started their own on-bill financing pilot programs that appear to be successful without needing any state involvement or authorization. Finally, many smaller efficiency projects can be accomplished without needing to hire a contractor or borrow money. SB 564 provides yet another mechanism to finance these improvements, but financing comes with administrative costs that come out of customers' pockets. Given these other options and the potential costs, it is unclear whether this bill is needed to promote water conservation in California.

3. Same difference. The framework established by SB 564 shares some similarities with PACE financing but also differs in important ways. First, like PACE, programs established under the bill are implemented by third party contractors who identify improvements at homes and businesses and then install those improvements with approval of the property owner. This arrangement has resulted in some issues where property owners are stuck with improvements that do not end up providing the expected savings. However, SB 564 protects consumers by requiring the JPA to verify that the improvements will be bill neutral and will generate total utility cost savings that exceed the total cost of the efficiency charges paid by the customer over the duration of the agreement. Second, the collection mechanism differs between PACE and programs under SB 564. PACE loans are repaid through special parcel taxes levied by community facilities districts. Because PACE loans are backed by secured property on the property tax rolls, they are a first-priority lien in the case of foreclosure and outstanding PACE assessments are paid before mortgage obligations. As a result, in 2010, federal mortgage financiers stated that they would no longer purchase mortgage loans secured by properties with outstanding PACE loans. However, loans under SB 564 are backed by charges on a customer's water bills, subject to the local agency collection processes that apply to those charges. Since SB 564 loans are not secured by a lien on the property, programs under the bill avoid the mortgage-related pitfalls of PACE financing.

4. Technical amendment. The committee may wish to consider amending the bill to correct "comply" to "complies" on p.9, line 23.

5. Related legislation. SB 564 is substantially similar to SB 1233 (McGuire, 2015), which the Senate Governance and Finance Committee passed on a 5-1 vote. SB 1233 died in the Assembly Appropriations Committee.

Support and Opposition (3/30/17)

Support: Association of Bay Area Governments; BayREN; California Apartment Association; California Building Industry Association; California Business Properties Association; California Chamber of Commerce; Sierra Club California; Sonoma County Regional Climate Protection Authority.

Opposition: Unknown.

-- END --

AB 59 Local Housing Trust Fund Program

IN BRIEF

AB 59 will create a new state investment in cities for the development of housing in high-cost areas. The bill modernizes the Local Housing Trust Fund program by expanding funding to developments above 60% Area Median Income (AMI) and tailors the program to rental and homeownership needs of high-cost cities.

BACKGROUND

Housing costs are rising throughout the United States, but it is specially so in California where, according to the Public Policy Institute of California, five of the ten most expensive large metropolitan housing markets in the nation are located. Housing costs in these high-cost metropolitan regions have reached pitched levels of unaffordability.

A divergence between median rents and median income has led to greater housing unaffordability in such high-cost areas. Such a high rent has come to put pressure on individuals who historically fall outside of state-subsidy. All state funds that subsidize the development of multi-family housing are efffectively capped at 60% AMI—either through statutory or regulatory limitations. In high-cost metropolitan areas, the free market does not naturally provide housing for many above that income designation—highlighting a need.

For many seeking homeownership, the inadequate qualifications of these programs in high-cost areas has contributed to the lack of homeownership opportunities. Many state programs for homeownership are capped at 80% AMI, while those which extend to 120% AMI have limitations that make them inadequate in high-cost areas. Limitations on home sale prices and qualifying homes—land trust/coops homes do not qualify.

The Greenlining Institute and the Urban Strategies Council illucidates on this dynamic in their 2016 report, "Locked Out of the Market: Poor Access to Home Loans for Californians of Color." They find that in Oakland, individuals at 100-120% AMI submitted a lower number of home loan applications than borrowers making 30-50% and 50-80% AMI. Similarly in Long Beach, individuals making between 80-100% AMI had a lower origination rate than residents in the 30-50% and 50%-80% AMI range.

In sum, existing programs are not flexible to provide housing that meets the needs of a diverse and complex housing crisis. The result of programs with such gaps in coverage has been the displacement of workers from their communities in high-cost areas. These are the teachers, firefighters, healthcare workers, and all other essentials members of a community.

The displacement of such workers is not only a detriment to communities themselves, but also to California as a whole as economically diverse communities are undermined. As residents are displaced away from their jobs, commutes will increase as well as traffic in California's highways effectively undermining California's goals to reduce carbon emissions. Notwithstanding the strain of long commutes on family life, the importance of neighborhood and environment in preparing children from working families for success and social mobility cannot be understated. And for those who brave such steep rental housing costs, have their capacity to save income and move towards homeownership undercut.

SOLUTION

Provides direct-assistance to cities, counties, cities, and counties located in high cost areas for the creation of affordable housing. Non-Profit organizations, such as Non-Profit Housing Trusts and Community Land Trusts, are eligible if they are in partnership with an eligible local jurisdiction. A high-cost area as defined by the Department of Housing and Urban Development for the purposes of setting national loan limits on Federal Housing Administration insured loans. Local jurisdictions outside of high-cost areas qualify if they can show a need. Eligible activities include downpayment assistance and the predevelopment costs, acquisition, construction, rehabilitation of rental housing projects or units within rental housing projects. The affordability of all rental units assisted is restricted for a period of 55 years. Funds must be matched dollar-for-dollar by the local entity, except for those unable to generate matching funds.

SUPPORT

FOR MORE INFORMATION

Rodolfo E. Rivera Aquino, Office of Asm. Tony Thurmond
(916)319-2015 | rodolfo.riveraaquino@asm.ca.gov

AMENDED IN ASSEMBLY MARCH 30, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 358

Introduced by Assembly Member Grayson

February 8, 2017

An act *to add Article 7 (commencing with Section 12100.500) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code,* relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 358, as amended, Grayson. Regional economic development areas.

The Military Base Reuse Authority Act authorizes counties and cities located wholly or partly within the boundaries of a military base to establish a military base reuse authority to prepare, adopt, finance, and implement a plan for the future use and development of the territory occupied by the military base.

This bill would create the Regional Economic Development Area Act, which would authorize a city, county, or city and county to designate an area within the city, county, or city and county that includes an active or inactive military base and up to ___ square miles surrounding the military base as a regional economic development area, and submit that area to the Governor's Office of Business and Economic Development for certification. The bill would provide that a regional economic development area certified pursuant to these provisions would receive priority for any grant of funds from a state agency for projects within that regional economic development area. The bill would require the Governor's Office of Business and Economic Development to adopt regulations for the implementation of these provisions.

~~Existing law finds and declares, among other things, that California's economic development organizations and corporations are an integral component of the state job creation effort and defines specified terms relating to economic development.~~

~~This bill would state the intent of the Legislature to enact legislation that would develop regional economic development areas.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 7 (commencing with Section 12100.500) is added to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

Article 7. Regional Economic Development Area Act

12100.500. (a) This article shall be known, and may be cited, as the Regional Economic Development Area Act.

(b) A city, county, or city and county may designate an area within the city, county, or city and county that includes an active or inactive military base and up to ___ square miles surrounding the military base as a regional economic development area. Upon adoption of a regional economic development area, the city, county, or city and county shall submit a request to the office for certification of the regional economic area.

(c) The office shall review a request by a city, county, or city and county pursuant to subdivision (b) and shall determine whether the area designated by the city, county, or city and county complies with subdivision (b) and any regulations adopted pursuant to subdivision (e). If the designated area is sufficient, the office shall certify the regional economic development area.

(d) A regional economic development area certified pursuant to subdivision (c) shall receive priority for any grant of funds from a state agency for projects within that regional economic development area.

(e) The office shall adopt regulations to implement this article.

~~SECTION 1. It is the intent of the Legislature to enact legislation that would develop regional economic development areas.~~

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1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

April 3, 2017

The Honorable Jose Medina
California State Assembly
State Capitol Building, Room 2141
Sacramento, CA 95814

RE: AB 890 (Medina). Local land use initiatives: environmental review. *(As amended 03/28/2017)* Notice of Opposition

Dear Assembly Member Medina:

On behalf of the League of California Cities, we must respectfully oppose your AB 890 (Medina), which requires environmental review of all proposed local initiatives and restricts proposed initiative ordinances, which may result in direct or indirect environmental impacts, from being placed on the ballot. AB 890 raises various serious points of concern for local governments as follows:

AB 890 Fundamentally Changes and Erodes the Local Initiative Process
AB 890 appears to significantly pre-empt and deter local initiatives by establishing de-facto (potentially unconstitutional) barriers to placing them on the ballot. We are extremely concerned about the proposed erosion of this fundamental aspect of democratic institutions that provides the public an avenue to bring forth proposals for voter review. AB 890 requires that proponents of *all* local initiatives, regardless of their subject or scope, request the city to conduct an environmental review in addition to preparing a title and summary of the proposed initiative. This provision creates cost and logistical barriers to proponents and local governments that would, in effect, bring the local initiative and election process to a halt.

AB 890 is a significant departure from current practice and law as it requires the legislative body to exercise authority to determine whether a proposed initiative is suitable for the ballot and transfers power to the state over local land use and initiative processes. This provision of AB 890 attempts to legislatively amend the Constitution to limit a certain type of initiative from being the subject of an initiative. As briefly noted above of the more troubling provisions of this measure is that AB 890 applies to *all* initiatives not just land use initiatives without attention to initiatives that would be conclusively determined on their face to have no environmental impact.

AB 890 further erodes the local initiative process by declaring that local land use initiatives are matters of statewide concern which assumes all initiatives will have effects beyond a city's jurisdictional limits.

Increased Workload and Cost Concerns
The provisions of AB 890 call for exponential increases in costs and workload for local governments that are unreasonable. To meet the mandates set forth in this measure, local governments would incur high costs and likely lack the staff levels required. Each environmental impact report (EIR) or mitigated negative declaration (MND) could range in the hundreds of thousands to millions of dollars and require hundreds of staff hours. Conducting environmental reviews, even when unnecessary, would result in incredibly costly and inaccessible elections. To aggravate the issue, AB 890 does not expressly allow cities to charge a fee to initiative proponents for the environmental review—placing the entire cost burden on the local government. Without this authorization, cities would not have the ability to impose a fee or

require proponents to pay and therefore would shoulder tremendous costs. The measure is silent on this matter and imposes a costly state mandate.

At a time when the Legislature and the Administration has publically advocated for and placed a significant focus on addressing the state's housing and homelessness crisis, AB 890 seems to run counter intuitive to this important policy objective with an unprecedented expansion of local election duties to new departments and agencies who oversee land use planning and environmental reviews—increasing costs, staff work, and time needed to comply. AB 890 could handcuff and bring elections to a halt by requiring that environmental reviews be completed within strict time constraints and in compliance with California Environmental Quality Act (CEQA). All this without regard for the narrow election timelines established in current law

Lastly, AB 890 fails to recognize that a stringent environmental review is a well-established part of the local land use permitting process and that of local governing body in their decision making. If there are shortcomings in existing law and practice relevant to environmental review through the permitting process then the attention should be focused there rather than mandating a new costly and prohibitive process that undermines local governments and public engagement.

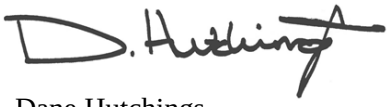
Additional Constitutional Issues

Legislative Authority to Impose Restrictions on Charter Cities

AB 890 likely preempts charter city authority over the initiative process in direct contradiction to the state constitution (Article (s) II and XI). The state constitution is clear in its delegation of authority over the initiative and referendum process to charter cities when voters have adopted local procedures in their charters. These charter cities do not have to follow election procedures adopted by the legislature. The requirements that an environmental review be requested for all local initiatives and that the legislative body must determine what is or is not suitable for the initiative process certainly preempt charter city authority and are likely unconstitutional.

For these reasons, we must respectfully oppose AB 890. If you have any questions regarding the League's position on this bill, please do not hesitate to contact me at (916) 658-8210.

Sincerely,



Dane Hutchings
Legislative Representative

cc: Chair and Members, Assembly Committee on Elections and Redistricting
Ethan Jones, Chief Consultant, Assembly Committee on Elections and Redistricting
Daryl Thomas, Consultant, Assembly Republican Caucus

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Evan Low, Chair
AB 890 (Medina) – As Amended March 28, 2017

SUBJECT: Local land use initiatives: environmental review.

SUMMARY: Prohibits projects that are subject to the California Environmental Quality Act (CEQA) from being considered or approved as part of the local initiative process, except when the project does not have the potential for a direct physical change to the environment or a reasonably foreseeable indirect physical change in the environment, as specified. Provides that a special election will be held for a local initiative measure only if the proponents of the measure fund that special election. Specifically, **this bill**:

1) Requires the proponent of a proposed local initiative measure to request an environmental review of the measure to be conducted, as specified, at the time that the measure is submitted to the local elections official for the preparation of a ballot title and summary. Requires the elections official to immediately transmit a copy of the measure to the planning department for the jurisdiction, which conducts the environmental review.

2) Requires the planning department of the local jurisdiction in which the measure is proposed to determine if the activity proposed by the measure is subject to CEQA within 30 days after the measure is filed. Requires the following actions to occur, depending on the result of the environmental review:

    a) If the activity proposed by the measure is not subject to CEQA, the initiative measure may proceed;

    b) If the activity proposed by the measure is subject to CEQA, and the planning department determines that the activity proposed by the measure does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, then the governmental body shall prepare a negative declaration within 180 days;

    c) If the activity proposed by the measure is subject to CEQA, and the planning department determines that the activity proposed by the measure has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, then the governmental body shall notify the proponents within 30 days after the measure is filed that the measure cannot be adopted by the initiative process, but can receive a public hearing if a sufficient number of signatures are collected.

3) Requires the local elections official to furnish a copy of the environmental determination prepared by the planning department, as described above, to the proponents of the initiative measure. Prohibits the proponents of a local initiative measure from circulating petitions for that measure until the environmental determination has been received. Requires a copy of the environmental determination to be included on each section of the initiative petition.

4) Eliminates the ability of a local governing body to directly adopt an initiative measure for which sufficient signatures have been collected on an initiative petition if a negative declaration has been prepared for that measure, and instead requires that the measure appear on the ballot for consideration by the voters of the jurisdiction. Requires the negative declaration to be circulated for public review and comment for at least 20 days before the meeting at which the governing body considers certifying the petition, and requires the governing body to consider any public comments raised.

5) Requires, in the case of a petition for a proposed initiative measure that is signed by a sufficient number of voters to qualify, but which cannot appear on the ballot under this bill because it is subject to CEQA and a negative declaration has not been prepared for the measure, that the legislative body require an environmental impact report (EIR) or mitigated negative declaration to be prepared to analyze the impacts of the activity proposed by the initiative. Requires the legislative body, once the environmental document is complete, to hold a public hearing to either approve or deny the proposal.

6) Prohibits the initiative process in a charter city from precluding environmental review of an initiative under state law.

7) Requires the proponent of a local initiative measure to fund any special election that is held to vote on the measure. Provides that if the proponent declines to fund the special election, the initiative shall instead be submitted to voters at the next statewide election (in the case of a county measure) or the next regularly scheduled election (in the case of a city or district measure) occurring in the jurisdiction that is at least 88 days after the date of the order of the election.

8) Defines the term "project," for the purposes of CEQA, to include an activity that is proposed by a local initiative measure that, if passed and adopted, would be implemented by a public agency if that activity may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

9) Prohibits a development agreement from being approved by an ordinance adopted through the initiative process.

10) Makes various findings and declarations.

11) Makes corresponding and technical changes.

EXISTING LAW:

1) Provides that the initiative is the power of electors to propose statutes and amendments to the Constitution and to adopt or reject them.

2) Provides that initiative powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide.

3) Requires a county or a city, when it receives an initiative petition that is signed by a specified number of voters, to do one of the following:

a) Adopt the initiative without alteration;

b) Submit the initiative to the voters, as specified; or,

c) Order a report on the initiative, to be completed within 30 days, before deciding whether to adopt it or submit it to the voters.

4) Requires a special district, when it receives an initiative petition that is signed by a specified number of voters, to do one of the following:

a) Adopt the initiative without alteration; or,

b) Submit the initiative to the voters, as specified.

5) Requires a local governing body that chooses to submit an initiative measure to the voters, rather than adopting the initiative without alteration, to call a special election for the voters to consider that initiative measure, if certain conditions are met.

6) Makes discretionary projects that are proposed to be carried out or approved by public agencies subject to CEQA, with certain exceptions. Requires the lead agency with the principal responsibility for carrying out or approving a proposed discretionary project, with respect to a project that is subject to CEQA, to determine whether the project may have a significant effect on the environment. Requires the lead agency to do the following, depending on the determination it makes regarding the project:

a) Adopt a negative declaration, if it determines that there is no substantial evidence, in light of the record before the agency, that the project may have a significant effect on the environment;

b) Adopt a mitigated negative declaration, if it determines that the project will have potentially significant effects to the environment, but revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment; or,

c) Prepare an EIR for the project, if it determines that there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

1) **Purpose of the Bill**: According to the author:

> [CEQA] is California's signature environmental protection statute that helps identify and feasibly mitigate significant environmental impacts of land use

developments. Unfortunately, the CEQA review process has been increasingly undermined by California's initiative process, a once highly regarded vital check on corporate influences over our government. Some developers are avoiding CEQA and other public review for proposed projects by qualifying a local measure for approval. Without a proper environmental review or mitigation plan, this results in significant, lasting negative impacts on communities.

This bill doesn't change the definition of a project subject to CEQA. The majority of projects subject to CEQA are approved via negative declaration. This bill seeks to strengthen local control with an understanding of cities tight budgets, their need for development, and desire not to see their air quality, public resources, and environment used in way that allows for only a certain set of developers to build and avoid environmental review and public scrutiny.

If we wish to reconcile the intent of CEQA regulation with that of the ballot initiatives, we must find a reasonable solution that strengthens and reaffirms California's commitment to both environmental protection and the spirit of the initiative process.

2) **CEQA Background**: CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment.

   If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR. Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

3) **CEQA and the Initiative Process**: In 1911, California voters amended the state constitution to reserve to themselves the powers of initiative and referendum. While the basic procedures governing the *state* initiative process are found in the state constitution, Article II, Section 11 of the California Constitution generally tasks the state Legislature with establishing procedures that govern the local initiative process. Unlike the state initiative process, where there is no formal procedure for an initiative to be directly adopted by the Legislature, the local initiative process generally gives the local governing body the authority to adopt a proposed initiative measure without alteration, thereby avoiding the necessity of a public vote on the initiative.

   When CEQA was enacted by the Legislature in 1970 through the passage of AB 2045 (Select Committee on Environmental Quality), Chapter 1433, Statutes of 1970, it did not expressly

address its applicability to measures proposed or adopted through the initiative process. Subsequent court cases, however, have held that the provisions of CEQA do not apply to initiatives proposed by voters and adopted at an election. In *Stein v. City of Santa Monica* (1980), 110 Cal. App. 3d 458, the California 2nd District Court of Appeals found that CEQA did not apply to a rent control charter amendment submitted to the voters of the City of Santa Monica through a voter-proposed initiative. In its decision, the court noted that the adoption of the measure "involved no discretionary activity directly undertaken by the city," but instead "was an activity undertaken by the electorate and did not require the approval of the governing body." The court further noted that "[t]he acts of placing the issue on the ballot and certifying the result as a charter amendment qualifies as a nondiscretionary ministerial act not contemplated by CEQA." Subsequent court decisions reached the same conclusion—namely that measures submitted to (and approved by) voters through a voter-proposed initiative are not subject to CEQA. In addition, CEQA guidelines specifically provide that voter-proposed initiatives are not subject to environmental review.

Even when a local governing body takes a discretionary action to approve a measure that was first proposed though an initiative, however, the California Supreme Court has ruled that the governing body is not first required to comply with CEQA. As noted above, when a local initiative petition is submitted that has a sufficient number of signatures, the local governing body generally has the option of adopting that initiative measure outright, rather than submitting the measure to the voters for their consideration. Notwithstanding the fact that the decision to adopt a voter-proposed initiative measure is a discretionary decision, rather than a ministerial one, the California Supreme Court ruled in *Tuolumne Jobs & Small Business Alliance v. The Superior Court of Tuolumne County* (2014), 59 Cal. 4th 1029, that when a city council adopts a voter-proposed initiative in accordance with the state law, rather than submitting that measure to the voters for their consideration, the city council does not need to comply with CEQA prior to adopting the measure. In reaching that conclusion, the court noted that the provisions of the Elections Code allowing for a local governing body to adopt a voter-proposed initiative and the timelines for taking such an action are inconsistent with the timelines and procedures for review of a proposed project under CEQA.

The fact that voter-proposed initiative measures are not subject to CEQA creates the potential that the initiative process could be used as a means to bypass environmental reviews that would otherwise be required under CEQA. In the case of initiative measures that are ultimately submitted to and approved by the voters, the fact that a proposed measure did not undergo CEQA review might be an issue considered by the voters during the campaign on the resulting ballot measure. The ability for a local governing body to directly adopt a proposed local initiative, however, also creates the potential for a project to bypass CEQA reviews even in a situation where the local voters are not asked to vote on the proposed initiative measure.

In fact, background materials submitted by the author's office suggest that such situations may already be occurring. A June 2016 article in the *New York Times* reported that one company that had "pioneered the use of ballot initiatives to speed construction over the last decade," had used proposed ballot measures in at least nine cities in the state since 2009. In eight of those cases, the local governing body approved the measures without submitting them to the voters for consideration. When the California Supreme Court reached its

decision in *Tuolumne Jobs & Small Business Alliance*, it acknowledged concerns that the initiative process could be used as a tool to evade CEQA review. Nonetheless, the Court declared that "those concerns are appropriately addressed to the Legislature."

4) **Exclusions from the Initiative Process**: Article II, Section 11 of the California Constitution tasks the Legislature with developing procedures for the exercise of initiative and referendum powers by voters in cities and counties. While that provision gives the Legislature a degree of discretion over how the local initiative process functions, it does not give the Legislature complete control over the scope of the local initiative process.

   Generally, the procedures enacted by the Legislature to govern the local initiative process have not expressly excluded certain subjects from being considered by the voters as part of that process. By expressly excluding certain measures from the local initiative process based on the fact that those measures otherwise would be subject to CEQA, this bill represents a significant departure from existing local initiative procedures developed by the Legislature. As detailed below, the opponents of this bill have raised a question of whether this restriction unconstitutionally interferes with the voters' right to initiative and referendum.

5) **More Stringent CEQA Procedures for Initiative Measures and Proposed Amendments**: As currently written, this bill could be interpreted as imposing more stringent environmental review procedures under CEQA for initiative measures than for measures that are not submitted by voter-proposed initiative. Furthermore, this bill could be interpreted as making initiative measures subject to CEQA in circumstances where the same policy proposal would not be subject to CEQA if proposed and adopted outside the initiative process. Such a policy does not appear to be consistent with the author's or the sponsor's intent.

   In an attempt to address this concern, the committee may wish to consider amending this bill to specify that when a local initiative is submitted for environmental review under this bill, the local entity conducting the review will determine whether the activity proposed by the measure may have a significant effect on the environment—the standard that lead agencies currently are required to follow when evaluating measures that are subject to CEQA.

6) **Costs of Special Elections & Possible Amendments**: Under existing law, the proponents of a local initiative measure have the ability to request that the measure be submitted to voters at a special election. By including a request for a special election in the initiative petition—and in most cases, by collecting a larger number of signatures—local initiative proponents can force the local government body to either adopt the initiative measure outright, or schedule a special election to vote on the measure, with certain exceptions.

   This bill requires the proponents of a local initiative measure to fund any special election that is held to vote on the measure. If the proponent refuses to fund such a special election, this bill would provide that the measure instead would appear on the ballot at a future regularly scheduled election in the jurisdiction. One effect of this provision is that initiative proponents who have the financial resources to cover the costs of a special election would have the ability to force a special election to occur, while proponents without the financial resources to cover those costs would not have the option of a special election for their measure. The committee may wish to consider whether it is appropriate to condition the

potential for a special election on the proponents' ability to pay for such an election, and may wish to consider removing those provisions from the bill.

7) **Arguments in Support**: In support of this bill, the California League of Conservation Voters, on behalf of itself and seven other organizations, writes:

> AB 890 (Medina)…closes a loophole in election law that allows developers to get projects approved without publicly disclosing or mitigating any environmental impacts of their projects. The most egregious example thus far is in Moreno Valley, where a proposed warehouse project will add 14,000 unmitigated truck trips a day. This is just the beginning of disastrous projects polluting California communities—many of whom are already burdened by effects of smog and diesel emissions, and is unconscionable to keep this loophole open.
>
> [CEQA] requires projects to publicly disclose their impacts and provide mitigation. This keeps the public aware of changes to conditions around them, and ensures that polluters clean up their act and pay for their pollution, not taxpayers. These vital protections have made California a better and healthier place for all.
>
> A recent court decision held that a developer loophole to bypass CEQA's protections for the community and the environment is legal. This allows developers to introduced unmitigated pollutants into communities, without communities knowing about them. The use of this loophole will degrade the public health of Californians throughout the state, and increase state costs to address new problems that should be paid for by the polluters.
>
> AB 890 will close this loophole by removing the inconsistencies between CEQA and the Elections Code. This will allow for ballot proposals to still use the petition process to avoid a costly election where it is not needed, but prevent the use of that petition process to avoid crucial environmental review.

8) **Arguments in Opposition**: The California Chamber of Commerce and 15 other organizations submitted a letter of opposition to a prior version of this bill. The amendments subsequently taken to this bill do not appear to have addressed the concerns raised in that letter. In that letter of opposition, the California Chamber of Commerce writes:

> **AB 890 Outlaws Virtually All Local Initiatives and Is Therefore Unconstitutional**
>
> AB 890 prevents any initiative from appearing on a ballot that "has the potential for resulting in either a *direct* physical change in the environment, or a reasonably foreseeable *indirect* change in the environment" — even if that change is not detrimental. Under this standard, virtually any initiative measure would be subject to a costly and protracted CEQA review and litigation. This sweeping standard would subject most proposed initiatives to the prohibition from appearing on the ballot…

The California Constitution…cannot reasonably be interpreted to allow the Legislature to utterly deprive citizens from using the initiative power. Creating a procedure that at best eliminates entire categories of initiative subjects, using vague verbiage, is undoubtedly unconstitutional.

AB 890 Will Subject Virtually All Initiatives to Protracted CEQA Litigation

AB 890 amends CEQA to include all initiatives in the definition of a "project" subject to the statute. Since initiatives by definition require a discretionary approval, under AB 890 all initiatives are subject to this new CEQA review. Also, in practice, most initiatives are controversial. Therefore, any local government decision regarding the scope of environmental review of an initiative — whether an initiative proposal would not "indirectly change the environment" and may proceed or, in the alternative, is barred from the ballot — would undoubtedly be litigated just as virtually all controversial CEQA projects are today…

AB 890 Is a Significant Shift of Power from the People to Local Elected Officials

The types of projects that would be prohibited from going to the ballot under AB 890 include not only housing and commercial development projects but also open space and agricultural land preservation ordinances, urban growth boundaries, new environmental regulatory regimes, and possibly tax increases for new public programs. Any of these proposals may be deemed to result in a direct or indirect physical change in the environment. Removing the public from the equation is a fundamental shift of political power from the electorate to elected officials that is both unconstitutional and unwise.

9) **Technical Amendments**: In addition to the amendments detailed above, committee staff recommends the following technical amendments to this bill:

On page 5, line 1, the word "city" should be replaced by "county".

On page 5, line 2, the word "city" should be replaced by "county".

10) **Related Legislation**: AB 943 (Santiago), which is pending in the Assembly Local Government Committee, requires any ordinance that is submitted to the voters of a city that would curb, delay, or deter growth or development within the city, to be approved by at least two-thirds of the votes cast on it at the election in order to take effect. AB 943 has been double-referred to this committee, and thus would be considered in this committee upon approval by the Assembly Local Government Committee.

AB 765 (Low), which is pending in this committee, eliminates the ability of the proponents of a local initiative measure to require the local government to call a special election to vote on the measure, and instead generally requires that the measure appear on the ballot at a regularly scheduled election in the jurisdiction, as specified, unless the governing body

chooses to call a special election for the measure.

11) **Double-Referral**: This bill has been double-referred to the Assembly Committee on Natural Resources.

REGISTERED SUPPORT / OPPOSITION:

Support

State Building and Construction Trades Council, AFL-CIO (Sponsor) (prior version)
CalBike
California Environmental Justice Alliance
California Labor Federation
California League of Conservation Voters
Coalition for Clean Air
Environment California
Environmental Protection Information Center
National Parks Conservation Association
Sierra Club California

Opposition

African-American Farmers of California (prior version)
California Association of Realtors (prior version)
California Building Industry Association (prior version)
California Chamber of Commerce (prior version)
California Citrus Mutual (prior version)
California Dairies, Inc. (prior version)
California Fresh Fruit Association (prior version)
California Independent Petroleum Association (prior version)
California State Association of Counties
California Strawberry Commission (prior version)
California Taxpayers Association (prior version)
City of Indian Wells
Far West Equipment Dealers Association (prior version)
Greater San Fernando Valley Chamber of Commerce (prior version)
League of California Cities (prior version)
National Federation of Independent Business (prior version)
Nisei Farmers League (prior version)
Rural County Representatives of California
Santa Maria Valley Chamber of Commerce (prior version)
Southwest California Legislative Council
West Coast Lumber & Building Material Association (prior version)

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094

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April 13, 2017

The Honorable Evan Low
California State Assembly
State Capitol Building, Room 4126
Sacramento, CA 95814

RE: **AB 1397 (Low) Local Planning: Housing Element: Inventory of Land for Residential Development.** ***(as Introduced 2/17/17)***
Notice of Opposition

Dear Assembly Member Low:

The League of California Cities opposes AB 1397 (Low), which would, among other things, revise the inventory of land suitable for residential development identified in a city's housing element to include vacant sites and sites that have "realistic and demonstrated potential" for redevelopment to meet a portion of the locality's housing need for a designated income level.

AB 1397 poses a number of significant challenges for local jurisdictions. Under existing law, a city's housing element must include an inventory of land which identifies sites that can accommodate the Regional Housing Needs Allocation (RHNA) for very low, low, moderate, and above moderate incomes. If sufficient sites are not available, then the housing element requires a city to rezone other sites within three years. AB 1397 abandons the general inventory process and instead require cities to identify land, including vacant sites, that have "realistic and demonstrated potential for redevelopment". This change requires an analysis that can't be done since there is no way for a city to determine whether the "potential for redevelopment" is "realistic." Additionally, if the site is vacant, then it is nearly impossible to evaluate whether the site has "demonstrated potential" for redevelopment.

The League of California Cities also opposes the requirement that cities bring utilities to each site identified in the housing element within 3 years of beginning the planning period. Existing law requires each site to include a general description of existing or planned water, sewer, and other dry utilities. Requiring cities to provide utilities to these sites would be incredibly expensive and place significant burden on a city's general fund, since developers typically fund expansion of utility services.

Additionally, AB 1397 places unnecessary restrictions on previously identified housing sites. More specifically, if in the previous housing element, development did not occur on certain sites listed in the inventory, AB 1397 would prohibit the current housing element inventory to include that site unless the site is zoned at Mullin densities and allows 100% affordable to lower income families by-right. The problem with this new provision is that it does not take into account housing projects that have been approved, by the local government, but not constructed. It is unclear if the intent is to override existing housing approvals.

The League is committed to working with you and others on finding comprehensive solutions to the housing supply and affordability crisis gripping many areas of the state. However, in its present form, the League must oppose AB 1397. If you have any questions regarding the League's position on this bill, please do not hesitate to contact me at (916) 658-8264.

Sincerely,

Jason Rhine
Legislative Representative

cc: Chair and Members, Assembly Committee on Housing and Community Development
Rebecca Rabovsky, Consultant, Assembly Committee on Housing and Community Development
William Weber, Consultant, Assembly Republican Caucus

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
AB 1397 (Low) – As Introduced February 17, 2017

SUBJECT: Local planning: housing element: inventory of land for residential development

SUMMARY: Makes a number of changes to housing element law by revising what may be included in a locality's inventory of land suitable for residential development. Specifically, **this bill**:

1) Makes legislative findings and declarations that designating and maintaining a supply of land and adequate sites suitable, feasible, and available for the development of housing sufficient to meet the locality's housing need for all income levels is essential to achieving the state's housing goals and the purposes of state housing element law.

2) Provides that a locality must determine whether each site in the inventory of land suitable for residential development has a realistic and demonstrated potential for redevelopment that can meet a portion of the locality's share of the Regional Housing Needs Allocation (RHNA) by income level during the planning period.

3) Provides that, in a locality's housing element, sites listed in the inventory of land suitable for residential development must meet the following requirements:

    a) The inventory shall specify for each site the number of units at each income level that can realistically be accommodated on that site. The locality shall determine the number of housing units that can be accommodated on each site, and the number of units calculated shall be adjusted as necessary, based on, among other things, the realistic development capacity for the site, and on the availability and accessibility of sufficient water, sewer, and dry utilities within three years of the beginning of the planning period.

    b) Requires parcels included in the inventory to have sufficient water, sewer, and dry utilities supply available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan, including a program or plan of a public or private entity providing water or sewer service, to secure sufficient water, sewer, and dry utilities supply to support housing development within three years of the beginning of the planning period.

    c) A residential or nonresidential zoned site identified in a prior housing element that was not developed to accommodate a portion of the locality's housing need shall not be deemed adequate to accommodate a portion of the housing need for lower income households in the current housing element planning period unless:

        i. The site has been zoned at densities deemed appropriate to accommodate the lower income RHNA; and

ii. The site is subject to a program in the element requiring rezoning to allow residential use by right for developments that are 100% affordable to lower income households within two years of the beginning of the planning period.

d) The capacity of a site zoned for development at densities that exceed the maximum density of existing or approved multifamily residential development shall be calculated at default densities unless a development at a greater density has been proposed and approved for development on the site.

e) A site smaller than one acre shall not be deemed realistic for development to accommodate lower income housing need unless a development affordable to lower income households has been proposed and approved for development on the site, unless subject to a program in the element requiring consolidation with a suitable adjacent site for development at greater than one acre within two years of the beginning of the planning period, or unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site.

f) A site larger than 10 acres shall not be deemed realistic for development to accommodate lower income housing need unless a development affordable to lower income households has been proposed and approved for development on the site, or unless the locality can demonstrate that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower income housing units as projected for the site.

g) Nonvacant sites shall not be deemed realistic for development to accommodate lower income housing need unless a development affordable to lower income households has been proposed and approved for development on the site, or unless subject to a program in the housing element requiring the site to be rezoned at default densities and to allow residential use by right for developments that are 100% affordable to lower income households.

h) For nonvacant sites, the locality shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential.

i. The methodology shall demonstrate that the existing use does not constitute an impediment to additional residential development during the period covered by the element.

ii. An existing use shall be presumed to impede additional residential development, absent findings based on substantial evidence that the use is likely to be discontinued during the planning period. This shall include an analysis of the locality's past experience with converting existing uses to higher density residential development, the current market demand for the existing use, an analysis of any existing leases or other contracts that would perpetuate the existing use or prevent redevelopment of the site for additional residential development, development trends, market conditions, and

regulatory or other incentives or standards to encourage additional residential development on these sites.

i) Nonvacant sites that currently have residential uses, or within the past five years have had residential uses that have been vacated or demolished, that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of low or very low income, subject to any other form of rent or price control through a public entity's valid exercise of its police power, or occupied by low or very low income households, shall be subject to a policy requiring the replacement of all those units affordable to the same or lower income level as a condition of any development on the site.

j) Clarifies that the residential site inventory may include sites zoned for nonresidential use that can be redeveloped for residential use, as consistent with existing law, provided that the housing element includes a program to rezone the site, as necessary, to permit residential use.

4) Requires, in a locality's rezoning program to accommodate its low-income RHNA, that the requirement under existing law that the sites shall be zoned to permit owner-occupied and rental multifamily residential use by right is limited to developments that are 100% affordable to lower income households. These sites also must have sufficient water, sewer, and other dry utilities available and accessible within three years of the beginning of the planning period.

5) Removes a locality's ability to list the airspace "above sites" of publicly owned or leased buildings to the types of sites that can be identified to accommodate a locality's share of the RHNA.

EXISTING LAW:

1) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element.

2) Requires a locality's housing element to identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.

3) Requires, prior to each housing element revision, that each council of governments (COG), in conjunction with the Department of Housing and Community Development (HCD), prepare a regional housing needs assessment and allocate to each jurisdiction in the region its fair share of the housing need for all income categories. Where a COG does not exist, HCD determines the local share of the region's housing need (Govt. Code Sections 65584-65584.09).

4) Divides the RHNA into the following income categories:

a) Very low-income (50% or lower of area median income), including extremely low-income (30% or lower of area median income);

b) Low-income (80% or lower of area median income);

c) Moderate-income (between 80% and 120% of area median income); and

d) Above moderate-income (exceeding 120% area median income).

5) Requires a locality to inventory land suitable for residential development to identify sites that can be developed to meet the locality's RHNA for all income levels. Provides that "land suitable for residential development" includes all of the following:

a) Vacant sites zoned for residential use;

b) Vacant sites zoned for nonresidential use that allows residential development;

c) Residentially zoned sites that are capable of being developed at higher density, including the airspace above sites owned or leased by a city, county, or city and county;

d) Sites zoned for nonresidential use that can be redeveloped for and as necessary, rezoned for, residential use, including above sites owned or leased by a city, county, or city and county.

6) Provides that the inventory of land suitable for residential development shall include all of the following:

a) A listing of properties by parcel number or other unique reference.

b) The size of each property, and the general plan designation and zoning of each property.

c) For nonvacant sites, a description of the existing use of each property.

d) A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis.

e) A general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities. This information need not be identified on a site-specific basis.

f) Sites identified as available for housing for above moderate-income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis.

g) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction's general plan, for reference purposes only.

7) Allows a locality to do either of the following in order to show that a site is adequate to accommodate some portion of its share of the RHNA for lower-income households:

a) Provide an analysis demonstrating that the site is adequate to support lower-income housing development at its zoned density level, and requires the analysis to include, but

not be limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households; or

b) Zone the site at the jurisdiction's "default" density level.

(Govt. Code Section 65583.2)

8) Establishes "default" density levels for purposes of establishing a site's adequacy for supporting lower-income housing development.

9) Requires that, where the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, rezoning of those sites, including adoption of minimum density and development standards, is required by a specified deadline. (Govt. Code Section 65583)

10) Requires the rezoning program to accommodate 100% of the need for housing for very low- and low-income households for which site capacity has not been identified in the inventory of sites. These sites must:

a) Be zoned to permit owner-occupied and rental multifamily residential use by-right during the planning period;

b) Be zoned with minimum density and development standards that permit between 16 and 20 units per acre, depending on the jurisdiction; and

c) Accommodate at least 50% of the very low- and low-income housing need on sites designated for residential use and for which nonresidential uses or mixed-uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed uses if those sites allow 100% residential use and require that residential use occupy 50% of the total floor area of a mixed-use project.

(Govt. Code Section 65583.2)

FISCAL EFFECT: Unknown

COMMENTS:

Every local government is required to prepare a housing element as part of its general plan. The housing element process starts when HCD determines the number of new housing units a region is projected to need at all income levels (very low-, low-, moderate-, and above-moderate income) over the course of the next housing element planning period to accommodate population growth and overcome existing deficiencies in the housing supply. This number is known as the RHNA. The COG for the region, or HCD for areas with no COG, then assigns a share of the RHNA number to every city and county in the region based on a variety of factors.

In preparing its housing element, a local government must show how it plans to accommodate its share of the RHNA. The housing element must include an inventory of sites already zoned for

housing. If a community does not have enough sites within its existing inventory of residentially zoned land to accommodate its entire RHNA, then the community must adopt a program to rezone land within the first three years of the planning period.

Local governments are required to demonstrate that sites are adequate to accommodate housing for each income group based on the zoning after taking into consideration individual site factors such as property size, existing uses, environmental constraints, and economic constraints. With respect to the zoning, density can be used as a proxy for affordability. Jurisdictions may establish the adequacy of a site for very low- or low-income housing by showing that it is zoned at the "default" density (also referred to as the Mullin density). These densities range from 10 to 30 units per acre depending on the type of jurisdiction. Jurisdictions may also include sites zoned at lower densities by providing an analysis of how the lower density can accommodate the need for affordable housing.

Need for this bill: According to the author, "One of the greatest barriers to addressing California's affordable housing crisis is the lack of appropriate sites on which new multifamily housing can be built in many communities. AB 1397 helps address this by tightening the standards for what constitutes an "adequate site" under housing element law for purposes of meeting some portion of a jurisdiction's RHNA."

"Unfortunately, current law has a number of gaps that allow jurisdictions to circumvent this critical planning obligation, relying on sites that aren't truly available or feasible for residential development, especially multifamily development. For example, the law permits local governments to designate very small sites that cannot realistically be developed for their intended use, or designate non-vacant sites with an ongoing commercial or residential use, even though the current use is expected to continue indefinitely. Even after many years of relying on these sites that never end up as new housing, the law allows jurisdictions to continue to count them as a potential location for housing. These practices lead to a scarcity of land that drives up the cost of housing and makes it difficult or impossible for affordable housing developers to find developable land in locations where affordable housing is badly needed. They also place an unfair burden on neighboring jurisdictions that do identify sites that are genuinely suitable for development."

This bill makes several changes to the "inventory of land suitable for residential development" analysis in housing element law, including:

- Establishes higher standards and requires a more detailed analysis before allowing sites with existing uses to be considered suitable for residential development.

- Limits reliance on sites that are over 10 acres or under 1 acre.

- Limits reliance on sites that have been listed across multiple Housing Elements without being developed as housing.

- Removes a locality's ability to list the airspace "above sites" of publicly owned or leased buildings to the types of sites that can be identified to accommodate a jurisdiction's share of the RHNA.

- Provides that only sites that will be served by water, sewer, and other dry utilities that are available and accessible within three years of the beginning of the planning period will be considered suitable for residential development.

- Limits a locality's rezone program, which rezones sites to permit owner-occupied and rental multifamily residential use by-right during the planning period, to projects that are 100% affordable.

- Requires nonvacant sites with existing or previous (within the last five years) affordable housing units to be subject to a policy requiring the replacement of all those units affordable to the same or lower income level as a condition of any development on the site.

Arguments in support: Supporters point out that the law recognizes that local governments are not generally in the housing construction business, but do have substantial control over whether or not there are opportunities for developers to come in and build in their jurisdiction. When done properly, this site identification can be a very effective tool in facilitating the construction of new housing at all income levels. In supporters' view, this bill helps address this need by strengthening state housing element law by limiting the reliance of local governments on sites that do not have a realistic capacity for development of housing. Housing production is incredibly important for all Californians and will take a concerted effort if we truly want to ensure that we have stable housing for our residents.

Arguments in opposition: In opponents' view, this bill poses a number of challenges for local jurisdictions. The City of Thousand Oaks contends that "creating such detailed inventories is inefficient use of staff time because it requires cities and counties to perform unnecessary and time-consuming analyses but will not necessarily yield more affordable housing." Opponents also take issue with the requirement that cities bring utilities to each site identified in the housing element within 3 years of beginning the planning period. Requiring cities to provide utilities to these sites would be costly and place significant burden on a city's general fund, since developers typically fund expansion of utility services.

Committee amendments:

The Committee may wish to consider the following clarifying amendments. The amendments do the following:

1. Make technical changes

2. Clarify low-income housing replacement requirements.

The proposed committee amendments are as follows:

On page 17, line 6, strike "unless a development affordable to lower income households has been proposed and approved for development on the site,"

On page 17, line 22, strike "unless a development affordable to lower income households has been proposed and approved for development on the site, or"

On page 17, line 31, strike "unless a development affordable to lower income households has been proposed and approved for development on the site, or"

On page 17, line 38, insert:

(E) A site may be presumed to be realistic for development to accommodate lower income housing need if, at the time of the adoption of the housing element, a development affordable to lower income households has been proposed and approved for development on the site.

On page 20, line 17, after "site." insert:

Replacement requirements shall be consistent with those set forth in subdivision (3) of paragraph (c) of Section 65915.

On page 24, line 10, strike "unless a development affordable to lower income households has been proposed and approved for development on the site,"

On page 24, line 26, strike "unless a development affordable to lower income households has been proposed and approved for development on the site, or"

On page 24, line 35, strike "unless a development affordable to lower income households has been proposed and approved for development on the site, or"

On page 25, line 3, insert:

(E) A site may be presumed to be realistic for development to accommodate lower income housing need if, at the time of the adoption of the housing element, a development affordable to lower income households has been proposed and approved for development on the site.

On page 26, line 36, after "site." insert:

Replacement requirements shall be consistent with those set forth in subdivision (3) of paragraph (c) of Section 65915.

Related legislation:

AB 2208 (Santiago) Chapter 460, Statutes of 2016: Added the airspace "above sites" of publicly owned or leased buildings to the types of sites that can be identified to accommodate a jurisdiction's share of the RHNA.

AB 1690 (Gordon) Chapter 883, Statutes of 2014: Authorizes a local government, when it fails to identify adequate sites in its housing element and must adopt a rezoning program, to accommodate all of its very low- and low-income housing need on sites designated for mixed uses only if those sites allow 100% residential use and require at least 50% residential floor area of a mixed-use project.

AB 414 (Jones, 2007)- Would have restricted the use of double-zoned sites to accommodate a city or county's RHNA share under housing element law, and amends the no-net-loss zoning law to clarify that upzoning or findings are required if fewer units are approved than were counted for the site in the housing element. *This bill was vetoed by the Governor.*

AB 2348 (Mullin)- Chapter 724, Statutes of 2004- Among other things, changed housing element law to establish minimum densities for multifamily development on the identified sites and to strengthen the definition of "use by right" applicable to such sites.

Double-referred: This bill was also referred to the Local Government Committee where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation (co-sponsor)
Public Advocates (co-sponsor)
Western Center on Law and Poverty (co-sponsor)
California Apartment Association
California Housing Consortium
Housing California
Leadership Counsel for Justice and Accountability
Non-Profit Housing Association of Northern California
SV@Home

Opposition

City of Thousand Oaks
League of California Cities

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