**SENATE COMMITTEE ON HOUSING**
**Senator Nancy Skinner, Chair**
**2023 - 2024 Regular**

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| **Bill No:** | AB 2430 | **Hearing Date:** | 6/18/2024 |
| **Author:** | Alvarez | | |
| **Version:** | 4/18/2024 | | |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | Erin Riches | | |

**SUBJECT:** Planning and zoning: density bonuses: monitoring fees

**DIGEST:** This bill prohibits a city or county from charging a monitoring fee on a 100% affordable housing development under the state's Density Bonus Law (DBL) if the development is subject to a regulatory monitoring agreement with the state Department of Housing and Community Development (HCD), the California Tax Credit Allocation Committee (TCAC), or the California Debt Limit Allocation Committee (CDLAC).

**ANALYSIS:**

*Existing law:*

1) Requires each city and county to adopt an ordinance that specifies how it will implement state DBL. Requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least one of the following:

   a) 10% of the total units of a housing development for lower income households;
   b) 5% of the total units of a housing development for very low-income households;
   c) A senior citizen housing development or mobile home park;
   d) 10% of the units in a common interest development (CID) for moderate-income households;
   e) 10% of the total units for transitional foster youth, veterans, or people experiencing homelessness;
   f) 20% of the total units for lower-income students in a student housing development; or

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

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

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

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

4) Provides, notwithstanding 3) above, that a city or county shall not impose a parking ratio higher than 0.5 spaces per unit, nor any parking standards, for a project that is:

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

5) Provides, notwithstanding 3) and 4) above, that a city or county shall not impose any minimum parking requirement on a housing development that consists solely of rental units for lower income families and the is either a special needs or a supportive housing development.

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

   a) One incentive or concession for projects that include at least 10% of the total units for moderate-income households, 10% of the total units for lower-income households, or at least 5% for very low-income households.
   b) Two incentives or concessions for projects that include at least 20% of the total units for moderate-income households, 17% of the total units for lower income households, or least 10% for very low income households.
   c) Three incentives or concessions for projects that include at least 30% of the total units for moderate-income households 24% of the total units for lower-income households, or at least 15% for very low-income households.

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

7) Prohibits local governments from imposing affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, on a housing development's affordable units in a density bonus project. Provides that any fee charged shall not exceed the estimated reasonable cost of providing the service for which the fee is charged.

8) Establishes various affordable housing funding programs under HCD, TCAC, and CDLAC.

**This bill:**

1) For purposes of DBL, defines "monitoring fee" as a fee charged by a city or county on a recurring basis to oversee and ensure the continued affordability of a housing development and any applicable local inclusionary housing ordinance.

2) Prohibits a city or county from charging a monitoring fee on a 100% affordable housing development if all of the following conditions are met:

   a) The housing development is subject to a recorded regulatory agreement with TCAC, CDLAC, or HCD specifying that 100% of all units in the development, are for lower-income households, except that up to 20% of the units may be for moderate-income households.
   b) The applicant provides to the local government, prior to receiving a building permit, a fully executed Tax Credit Reservation Letter indicating that the applicant accepted the award.
   c) The applicant provides to the local government a copy of a recorded regulatory agreement with TCAC, CDLAC, or HCD.
   d) The applicant agrees to provide to the local government the compliance monitoring document required pursuant to TCAC, CDLAC, or HCD regulations.

3) Provides that beginning on January 1, 2025, a housing development that is currently placed in service, is subject to a monitoring fee, and meets the requirements of (2) above shall no longer be subject to that fee.

4) Authorizes a city or county, notwithstanding (2) above, to charge a monitoring fee on a 100% affordable housing development if any of the following conditions are met:

   a) The applicant utilizes a local density bonus program that requires deeper affordability, including a higher number of affordable units, or uses a local incentive program where a percentage of the units are affordable to and occupied by moderate-income households.
   b) The applicant accepts a local funding source that requires different affordability, measured through AMI or rents, than what is monitored by TCAC, CDLAC, or HCD.
   c) The applicant accepts funding from a regional, state, or federal agency other than TCAC, CDLAC, or HCD that requires local monitoring activities that would not otherwise be conducted by TCAC, CDLAC, HCD, or the public agency issuing the funding.

**COMMENTS:**

1) *Author statement*. "All affordable housing projects that utilize State Density Law and receive state funding, are subject to compliance monitoring to ensure that the units are occupied by a tenant at an eligible income level and that developments meet habitability standards. This state level compliance monitoring is a thorough process that includes desk audits and physical inspections conducted by HCD and TCAC. Although most cities rely on state monitoring activities to ensure compliance, some cities and counties charge developers a fee to also provide compliance monitoring. While local monitoring fees can vary, most are hundreds of dollars per unit annually, which is in addition to the monitoring fees the state charges. California is one of the most expensive places to build housing in the state, which makes housing developments incredibly difficult to pencil. This is especially true for affordable housing projects that rely on state and federal funding to make it viable. Any additional cost, especially when it funds duplicative activities, can unnecessarily make or break the viability of a project. By cutting duplicative costs for developers, AB 2430 will play an important role reducing the price of building affordable housing in California."

2) *Density Bonus Law.* Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. DBL allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than

would otherwise be allowed by the local zoning ordinance, in exchange for affordable units. Allowing more total units permits the developer to spread the cost of the affordable units more broadly over the market-rate units. The idea of DBL is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy.

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

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

3) *High costs of affordable housing construction*. California has the largest concentration of severely unaffordable housing markets in the nation; the typical home value in California reached $747,000 in September 2023, a 1% decrease from the same month last year, but still far exceeding the national typical home value of $349,500. The lack of supply is the primary factor underlying California's housing crunch.
   The cost to develop affordable housing is not fundamentally different than market-rate housing – the same land, construction, and regulation trends that increase costs in the market impact all housing development types. In many instances, affordable projects are subject to increased local scrutiny, which can further inflate costs.

A 2020 study of the components of building housing[1] notes that there are several key cost factors that, when added up, can affect the ability of a housing project – affordable or market rate – to "pencil out." In recent years, all of these various factors have gone up in price, which, in turns, increases the price of housing. Some of the components to building housing include: land values, construction costs, materials and labor, development fees, permitting and development timelines, and regulatory requirements. Because housing is so expensive to build, and the amount that a low-income household can reasonably pay is relatively low, a significant amount of subsidy is needed for each affordable unit. In practice, this means that a developer must cobble together multiple sources – between 8-12 different sources – of financing to make a project feasible. In general, there are two main building blocks to funding an affordable rental housing development: (1) 9% low-income housing tax credits (administered by TCAC), and (2) 4% low-income housing tax credits (also administered by TCAC) combined with Multifamily Housing Program (MHP) funds (administered by HCD). In both cases, almost invariably a funding "gap" still exists that the developer must fill from other sources, usually those available from local governments.

4) *State monitoring of affordable housing developments*. The state entity providing funding to an affordable housing development – most commonly HCD, TCAC, and/or the California Housing Finance Agency (CalHFA) – monitors the property to ensure compliance with requirements such as units being rented at the restricted rent level. Each funding entity has its own regulatory agreement with the property, and each charges a different amount for monitoring activities. To support the costs of HCD monitoring, developments pay a flat annual fee of 0.42% of the total loan amount ($46,200 annually for an average $11 million loan); this means that as construction costs rise, monitoring fees rise. TCAC charges a one-time, per-unit monitoring fee of $410. CDLAC, which does not have a substantial monitoring role, does not charge a monitoring fee, while CalHFA charges a flat annual fee of $7,500.

   **Because CDLAC does not charge monitoring fees, and CalHFA does charge monitoring fees, the author has agreed to amend this bill to remove CDLAC and add CalHFA.**

5) *Streamlining state housing agency monitoring*. To reduce costs and complexity for developers, AB 2006 (Berman, Chapter 646, Statutes of 2022) requires HCD, CalHFA, and TCAC to enter into a Memorandum of Understanding (MOU) by July 1, 2024 to streamline the compliance monitoring of affordable

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[1] *The Cost of Building Housing*. Terner Center for Housing Innovation. Accessible here: https://ternercenter.berkeley.edu/wp-content/uploads/2020/08/Cost_of_Building_Housing_Series_Framing.pdf .

multifamily rental housing developments that are subject to a regulatory agreement with more than one of these entities. For multifamily rental housing developments with regulatory agreements with all three entities (HCD, CalHFA, and TCAC), the entities must adopt a compliance structure that requires only one entity to conduct physical inspections for a particular project. The agencies indicate that the MOU is in the final stages and they are on track to adopt it by the July 1 deadline. One of the goals for the MOU is to streamline monitoring fees.

6) *Local fees and inclusionary ordinances*. Cities charge fees on housing developments of various sizes to cover the impact of the housing development on the community. Local governments may also adopt inclusionary housing ordinances that require a developer to include a percentage of affordable housing on site, pay an in lieu fee to fund affordable housing elsewhere in the community, or dedicate land for affordable housing construction. DBL requires a developer to record 55-year covenants on the affordable housing units that qualify it for the density bonus. In some cases, local governments' inclusionary housing ordinances require affordability covenants that exceed 55 years. AB 571 (Mayes, Chapter 346, Statutes of 2021) prohibits local governments from imposing affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, on a housing development's affordable units in a density bonus project.

7) *Local monitoring fees*. Most affordable housing developments receive funding from multiple state funding programs, and in some cases also receive local funding. According to Housing California and the California Housing Consortium, co-sponsors of this bill, some cities and counties also conduct their own monitoring programs and levy their own local fee. This means that projects that receive state funding are charged multiple times for monitoring activities that are in most cases redundant or extraneous. Local monitoring fees vary, but can run as high as $432 per unit annually. For an average-sized 100% affordable housing project, this amounts to an additional $1.9 million in total development costs. These fees impose additional financial strain for affordable housing developers, who already struggle to make these projects pencil out.

   This bill would prohibit local agencies from charging monitoring fees on 100% affordable housing developments under DBL that are already subject to state monitoring. Local agencies would only be allowed to charge monitoring fees in specific cases including a development that uses a local density bonus program or local funding that requires deeper or different affordability than the state entities, or when the applicant accepts other regional, state, or federal funding that requires additional local monitoring. California Housing Partnership

Corporation, co-sponsor of this bill, states that paying monitoring fees to more than one public entity reduces the amount of private debt a development can leverage, ultimately increasing the need for public subsidy. In the end, public entities pay these duplicative monitoring fees and reduce the overall number of units they are able to finance. This bill would create a more time- and resource-efficient system for monitoring compliance, allowing the state to build additional affordable homes to meet the overwhelming need.

8) *Double referral.* This bill has also been referred to the Local Government Committee.

**RELATED LEGISLATION:**

**AB 2006 (Berman, Chapter 646, Statutes of 2022) —** required HCD, CalHFA, and TCAC to enter into a Memorandum of Understanding (MOU) by July 1, 2024 to streamline the compliance monitoring of affordable multifamily rental housing developments that are subject to a regulatory agreement with more than one of these entities.

**AB 571 (Mayes, Chapter 346, Statutes of 2021)** — prohibited local governments from imposing affordable housing impact fees, including inclusionary zoning fees and in-lieu fees, on a housing development's affordable units in a density bonus project.

**AB 434 (Daly, Chapter 192, Statutes of 2020)** — aligned six state rental housing programs with MHP to enable HCD to implement a single application and scoring system for making coordinated awards under all seven programs. Included provisions to standardize the monitoring fee and procedures for these programs to 0.42% per year.

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

**POSITIONS: (Communicated to the committee before noon on Wednesday, June 12, 2024.)**

**SUPPORT:**

California Housing Consortium (Co-Sponsor)
Housing California (Co-Sponsor)
California Apartment Association
California Housing Partnership Corporation
LeadingAge California

## OPPOSITION:

None received

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