

- 3) Provides that if a state or local agency extends a housing entitlement between January 1, 2024 and the effective date of this bill, that housing entitlement shall not be extended for an additional 24 months.
- 4) Defines “housing entitlement” as:
 - a) A legislative, adjudicative, administrative, or any other kind of approval, permit, or other entitlement necessary for, or pertaining to, a housing development project issued by a state agency.
 - b) An approval, permit, or other entitlement issued by a local agency for a housing development project that is subject to the Permit Streamlining Act.
 - c) A ministerial approval, permit, or entitlement by a local agency required as a prerequisite to issuance of a building permit for a housing development project.
 - d) A requirement to submit an application for a building permit within a specified period after the effective date of a housing entitlement.
 - e) A vested right associated with an approval, permit, or other entitlement.
- 5) Provides that a “housing entitlement” does not include:
 - a) Development agreements.
 - b) Approved or conditionally approved subdivision map acts that have already been extended (SB 9, Atkins, Chapter 162, Statutes of 2021.
 - c) Preliminary applications under the Housing Crisis Act of 2019 (SB 330, Skinner, Chapter 654, Statutes of 2019).
- 6) Provides that the 24 month extension in this bill shall be tolled during any period that the housing entitlement is the subject of a legal challenge.
- 7) Provides that nothing in this bill shall preclude a local government from providing an extension in addition to the 24 months specified in this bill.
- 8) Provides that utility service fees related to connections may be collected at the time an application for service is received, provided those fees do not exceed the costs incurred by the utility provider resulting from the connection activities.
- 9) Provides that when a local agency requires a property owner or lessee to execute a contract to pay any outstanding fees or charges as a condition of issuing the building permit, the local agency may authorize an officer or employee of the local agency to approve and execute contracts on its behalf.

Requires a local agency, prior to execution of a contract, to post a model form of the contract on its website.

- 10) Provides, for priority residential development projects, that if a local agency imposes any fees or charges on the housing development for the construction of public improvements or facilities, then all of the following conditions apply:
 - a) Prohibits the local agency from requiring the payment of those fees or charges until the date the certificate of occupancy is issued. Utility service fees related to connections may be collected at the time of application for service is received, provided that those fees do not exceed the costs incurred by the utility provider resulting from the connection activities.
 - b) Requires the amount of fees and charges to be the same amount as would have been paid had they been paid prior to the issuance of building permits. Prohibits the local agency from charging interest or other fees on any deferred amount.
 - c) Provides that if the housing development includes more than one dwelling, the local agency may determine whether fees and charges shall be paid:
 - i) On a pro rata basis for each dwelling when it receives its certificate of occupancy;
 - ii) On a pro rata basis when a certain percentage of the dwellings have received their certificate of occupancy; or
 - iii) On a lump sum basis when all the dwellings in the development receive their certificate of occupancy.
- 11) Provides that if the local agency does not issue certificates of occupancy for these types of housing developments, the final inspection shall serve as the certificate of occupancy.

COMMENTS:

- 1) *Author's Statement.* "Senate Bill 937 seeks to minimize the impact of market fluctuations and high interest rates on housing production by delaying development fees and providing additional time post-entitlement. Many cities have deferred the collection of development fees during periods of economic hardship to prevent housing production from halting. Additionally, economic volatility can cause some projects to die because their entitlements expire before the developer can raise the money to complete the project. Cities grant entitlements to developers as the last step before construction begins, but they are typically only valid for a limited period before expiring. With today's high interest rates and rising costs driven by COVID-related inflation, developers are

facing a challenge to make projects pencil. SB 937 helps address these concerns by delaying the payment of development fees imposed by a local government until the certificate of occupancy is issued. Local governments may not charge interest rates on any deferred fees. Further, SB 937 provides developers with much-needed wiggle room by extending housing entitlements issued prior to Jan. 1, 2024 and set to expire on or before Dec. 31, 2025 by 18 months. These provisions will ensure market conditions do not dampen California's work towards addressing our housing crisis.”

- 2) *Impact fees.* Local governments can charge a variety of fees to a development. These fees, commonly known as impact fees or mitigation fees, go toward infrastructure development (such as adding lanes to roads or supporting additional traffic) or other public benefits (such as new parks, schools, or affordable housing). In the wake of Proposition 13 in 1978 and the resulting loss of significant property tax revenue, local governments have also turned to development fees as a means to generate revenue. Given that California cities have tightly restricted funding sources, fees are one of the few ways cities can pay for the indirect costs of growth. The Mitigation Fee Act requires local officials, when establishing, increasing, or imposing a fee as a condition of approving a development project, to identify the purpose of the fee; identify the use of the fee, including the public facilities that the fee will finance; determine a reasonable relationship between the use of the fee and the development; and determine a reasonable relationship between the public facility's need and the development. Local agencies must also produce an annual report on developer and other fees.
- 3) *Housing entitlements.* In general, constructing a housing development project requires local government approval at multiple stages; this approval process is often referred to as the entitlement process. An approval is generally considered an entitlement when it locks in the regulatory standards that a local government or state agency can apply to a project. Entitlements are powerful documents as they provide certainty to developers, which can help them secure financing for a project. However, entitlements also constrain the ability of local governments and state agencies to adjust for new conditions. Additionally, when an issued entitlement is outstanding, it alters the ability of the local government or state agency to approve other projects that could potentially be impacted by the pending project. Therefore, various entitlements are subject to expiration, although many may be extended at the discretion of the local government or state agency.

According to a study conducted by Berkeley Law School and others, *Getting It Right: Examining the Local Land Use Entitlement Process in California to*

Inform Policy and Process, in which local government land use and review processes across selected cities in the Bay Area and Southern California were examined, “the processes by which local governments review residential development projects under their zoning ordinances and under CEQA varies from city to city. As a result, developers seeking to construct residential projects often must learn to navigate very different and complicated land use systems, even if they work in the same region.” In addition, developers of affordable housing projects must navigate a web of overlapping eligibility criteria and application deadlines for various state and local housing programs, which often results in project delays as developers work to line up various funding sources. An economic recession, such as current economic difficulty related to the COVID-19 pandemic, can result in even further delays.

Thus, the Legislature has occasionally sought to assist developers by extending certain entitlements. For example, AB 1561 (C. Garcia, Grayson, Chapter 195, 2020) included a provision for an 18-month extension for planning level and pre-building permit entitlements that were issued prior to the COVID State of Emergency declared by the Governor on March 4, 2020 and were set to expire prior to December 31, 2021. This bill, in recognition of factors such as rising interest rates, changes in insurance markets, and labor and construction costs, provides a 24-month extension for entitlements for priority residential development projects.

- 4) *Recent legislative actions to provide certainty and transparency in the permitting process.* Given the complexities of developing housing in California, and in particular multifamily housing, the Legislature and Governor have passed over 150 bills since 2016 in an effort to facilitate more housing production. One such set of reforms includes expediting and simplifying the approval process at the pre-entitlement, entitlement, and post-entitlement phases, including creating multiple pathways for by right approvals for ADUs, deed-restricted affordable housing, and market-rate housing (*see AB 2234 Rivas, 2022 and SB 330 Skinner 2019*). These entitlement reforms have provided more certainty as to what is required for permitting approval, and generally requires approval within specified timelines. This certainty and shortened approval timelines are particularly beneficial to affordable housing developers seeking funding from multiple federal, state, and local public funding sources. Additionally, this certainty provides more opportunities for multifamily developers to build in jurisdictions that are not housing friendly. Some local governments have intentionally made entitlement and permitting onerous to such a degree developers – and in particular affordable housing developers -- have avoided working in those jurisdictions altogether. Longer, uncertain permitting situations are risky for developers, and could kill projects

all together. Streamlining unlocks more land opportunities, particularly in higher-resource, unfriendly housing cities.

This bill takes further steps to increase flexibility and certainty in relation to fees for priority residential housing developments:

- a) Provides a 24 month extension for development entitlements.
- b) Prohibits a local agency from charging interest or other fees on any deferred amount.
- c) Provides that utility service fees related to connections may be collected at the time of application for service is received *only* if those fees do not exceed the utility provider's costs for the connection.
- d) Prohibits a local agency from requiring payment of fees or charges until the date the certificate of occupancy is issued (existing law allows a local agency to require payment at the date of final inspection, which falls prior to certification of occupancy).

In addition, in cases where a local agency requires a contract requiring payment of fees and charges as a condition of issuing the building permit, this bill provides that the local agency may authorize an officer or employee to execute contracts on its behalf (to help avoid potential delay of having to wait for a legislative body to approve it in a public meeting) and requires the local agency to post a model form of the contract on its website.

- 5) *Priority residential development projects.* This bill initially applied to all housing development projects. To help address local government concerns about the costs of deferring fee payments, it was amended in Senate Local Government Committee to apply only to “priority residential development projects.” These projects, which are generally streamlined affordable housing developments, face greater difficulty in penciling out without government subsidies than market rate developments. The definition of priority residential development projects is based on AB 434 (Grayson, Chapter 740, 2023), which added specified housing laws to the list of laws that the Department of Housing and Community Development (HCD) is required to enforce.
- 6) *Opposition concerns.* All of the opposition letters received by the committee by the deadline referenced the prior version of this bill. However, local government advocates have indicated to the committee that they continue to have significant concerns with the 24-month deferment, which is still included in the current version of this bill.

7) *Incoming!* This bill was heard in the Senate Local Government Committee on April 3, 2024 and received a vote of 6-0.

RELATED LEGISLATION:

AB 434 (Grayson, Chapter 740, 2023) -- added specified housing laws to the list of laws that the Department of Housing and Community Development is required to enforce.

AB 2234 (Rivas, Chapter 651, Statutes of 2022) -- established time limits and procedures for approval of, and requires online permitting of, post-entitlement permits.

AB 1561 (C. Garcia, Grayson, Chapter 195, 2020) -- required a local government's housing element to include an analysis of governmental constraints upon housing for individuals identified under the Unruh Civil Rights Act to be members of a protected class and provides an 18-month extension for specified approvals of housing development projects. Includes a provision extending, by 18 months, the time frame for the expiration, effectuation, or utilization of a housing entitlement that was issued prior to, and was in effect on, March 4, 2020, and was set to expire prior to December 31, 2021.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 10, 2024.)

SUPPORT:

California Housing Consortium (Co-Sponsor)
California YIMBY (Co-Sponsor)
Housing Action Coalition (Co-Sponsor)
American Council of Engineering Companies of California
Apartment Association of Greater Los Angeles
Bay Area Council
California Apartment Association
California Building Industry Association (CBIA)
California Community Builders
California Hispanic Chambers of Commerce
California Rental Housing Association
Central City Association
East Bay YIMBY
Fieldstead and Company, INC.

Fremont for Everyone
Grow the Richmond
House Sacramento
Housing Trust Silicon Valley
How to ADU
LeadingAge California
Livable Communities Initiative
Midpen Housing
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
Progress Noe Valley
Rand Paster Nelson
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
Silicon Valley Leadership Group
South Bay YIMBY
Southside Forward
SPUR
Streets for People
Urban Environmentalists
Ventura County YIMBY
YIMBY Action

OPPOSITION:

California Coalition for Adequate School Housing (CASH)
California Special Districts Association
City of La Verne
Desert Water Agency
East Bay Housing Organizations
El Dorado Irrigation District

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