



- b) Requires a local agency to ministerially approve, within 60 days, an application for a building permit to create an ADU and a JADU, as specified.
- c) Prohibits a local ordinance from requiring an applicant for an ADU to be an owner occupant.
- d) Imposes certain minimum and maximum square footage, height, and setback limits for ADUs.
- e) Provides for a tiered schedule of impact fees based on the size of the ADU, as specified.

**This bill:**

- 1) Requires the STO, within six months of the effective date of this bill, to establish the Help Homeowners Add New Housing Program (Program) to help homeowners qualify for loans to construct additional housing units on their property, including ADUs and JADUs. Requires the STO to consult with the state Department of Housing and Community Development (HCD) and CalHFA, and authorizes the STO to consult with private lenders, in developing the Program.
- 2) Requires the Program to:
  - a) Provide partial loan guarantees and other credit enhancements for residential property owners in order to induce private lenders to issue loans for the construction of additional units, which will then be rented out.
  - b) Require the state to partner with private lenders with a history of originating federally backed construction loans or ADU loans.
  - c) Require originating lenders to retain a percentage of risk in an amount determined by the STO.
  - d) Charge premiums, fees, and interest sufficient to cover the administrative costs of the program and the risk of defaults associated with the program.
  - e) Be designed to add 50,000 units to single-family properties within five years.
- 3) Requires the STO to establish for the Program:
  - a) Minimum criteria for a homeowner to participate in the program based on income, credit worthiness, home equity, potential rental income of the proposed unit, and any other criteria deemed relevant by the STO.
  - b) Minimum criteria for an originating lender to participate in the program based on the lender's history of originating federally backed construction loans or ADU loans.

- c) The maximum percentage of actual loss guaranteed by the state under this program.
  - d) A premium structure to adequately cover the administrative costs of the program and the risk of defaults associated with the program.
- 4) Requires CalHFA, in coordination with the STO, to issue revenue bonds in a principal amount determined by the STO to provide sufficient funding for the Program. Establishes an account for the Program in the California Housing Finance Account, administered by CalHFA, and provides for continuous appropriation of funds to the Program.
- 5) Provides that bonds issued pursuant to this bill do not constitute a debt or liability of the state and do not constitute a pledge of the full faith and credit of the state, but are payable solely from the funds provided to the Program.

## COMMENTS

- 1) *Author's statement.* "At a time when more families are struggling to make ends meet and the consequences of homelessness are growing, AB 69 will help get more affordable units online and money in families' pockets. As the demand for housing continues to outpace supply, ADUs have surged in popularity as a way to address California's housing crisis. AB 69 will help create an anticipated 50,000 ADUs over the next five years and provide just as many families with additional rental income by providing homeowners with bridge loans to finance ADU construction."
- 2) *Background: ADUs.* ADUs, also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats, are additional living spaces on single-family lots that have a separate kitchen, bathroom, and exterior access independent of the primary residence. These spaces can either be attached to, or detached from, the primary residence. Local ADU ordinances must meet specified parameters outlined in existing state law. Local governments may also adopt ordinances for JADUs, which are no more than 500 square feet and are bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink and stove, but is not required to have a bathroom. HCD notes that "ADUs are an innovative, affordable, effective option for adding much-needed housing in California."

According to a UC Berkeley study, *Yes in My Backyard: Mobilizing the Market for Secondary Units*, second units are a means to accommodate future growth and encourage infill development in developed neighborhoods. Despite

existing state law, which requires each city in the state to have a ministerial process for approving second units, the study found that local regulations often impede development. Last year, several bills, particularly SB 13 (Wieckowski) and AB 68 (Ting), relaxed multiple requirements for the construction and permitting of ADUs and JADUs.

The cost of constructing an ADU, however, can still be high. The STO, co-sponsor of this bill, notes that many lower income homeowners, as well as homeowners who have not yet built up significant equity in their homes, are struggling to obtain loans to construct ADUs.

- 3) *Current state funding for ADUs.* Currently, the only state program that provides funding for ADU construction is a pilot program under CalHFA. Under this program, CalHFA is partnering with Self-Help Housing Enterprises, a community development organization based in the San Joaquin Valley, to use \$2.5 million in CalHFA funding to act as the construction lender for the City of Clovis' Cottage Home Program. The city is providing three design templates to homeowners at no cost, in addition to expedited reviews and fee waivers, for ADU projects. The home plans, each less than 400 square feet, are intended to orient onto alleys in an effort to both revitalize alleys and create more housing. No other pilots have been implemented at this time.
- 4) *Stimulus package.* On July 27, 2020, a coalition of Assembly and Senate Democrats unveiled a joint \$100 billion stimulus plan aimed at boosting the economy and protecting jobs, small businesses, and working families. This plan is to be funded through a new tax voucher program and the acceleration of other existing revenue streams. One of the goals of the plan, to "increase affordable housing supply by helping homeowners access financing to build ADUs," is addressed by this bill.
- 5) *How would the Program work?* The intent of this bill is to provide homeowners with bridge loans to finance ADU construction until they can begin generating rental income from the ADU and thereby qualify for existing loan programs. Specifically, the state will partner with private mortgage lenders with existing track records of originating federally-backed construction and ADU loans. The Program will spur private market lending by providing lenders with financing, a credit guarantee, or both, for short-term loans to homeowners for the construction period and until homeowners are eligible for an existing federally-backed mortgage product, such as the HomeReady Program (see below). Initial capitalization of the Program will be provided through the issuance of revenue bonds; the bonds will be repaid through revenues generated by fees or interest, or both, charged by the state to

participating lenders and homeowners. While the Program will be housed in the STO, similar to programs such as TCAC and CDLAC, the revenue bonds to fund the program will be issued by CalHFA.

- 6) *The HomeReady Program.* The HomeReady Mortgage Program, under the Federal National Mortgage Association (Fannie Mae), is a down payment program aimed at helping low- and moderate-income borrowers in designated low-income and disaster-impacted communities. HomeReady offers low rates, minimal risk-based price adjustments, and reduced mortgage insurance costs to homebuyers who would otherwise qualify for a mortgage but do not have the resources for a large down payment. To qualify, the borrower's income must be below 100% AMI, except there is no income limit on properties in low-income Census tracts. The program allows for a credit score as low as 620. HomeReady is offered for owner-occupied primary residences, including single-family homes of one to four units, condominiums, townhomes, and planned unit developments. Manufactured housing mortgages are also available, as well as flexibility for extended family households, such as allowing rental income for an ADU or boarder.
  
- 7) *Committee concerns.* The committee acknowledges the significant need to create additional housing units across the state. However, in order to best focus limited state resources, state housing programs are generally targeted to participants or units at lower-income levels. The Program created by this bill does not restrict rental rates on ADUs financed under the Program; nor does it place any income restrictions on participating homeowners. Moving forward, to ensure that the Program focuses on homeowners most in need of assistance, the author may wish to consider amending this bill to address the following issues.
  - a) *Homeowner eligibility.* This bill defines an eligible homeowner as an owner of a single-family residential property who does not own more than three 1-4 unit residential properties. While limiting the Program to lower-income homeowners could either make lenders unwilling to participate, or drive the state guarantee higher to help address loan default risk, the author may wish to consider requiring a certain percentage of the Program to be targeted to homeowners at or below 100% of the area median income of the county in which the home is located.
  
  - b) *Eligibility of homes.* The author may wish to consider restricting the program to homes that do not exceed 150% of the median home price for the area.

- c) *Rental requirements.* The committee understands that the author prefers not to place rental restrictions on the Program, since participating homeowners will use the ADU rental income to repay the loans. That said, it is important to ensure that the Program actually results in new units of housing. To that end, the author may wish to explicitly require participating homeowners to rent or lease out ADUs built under this Program, for a minimum number of years.
- d) *Geographic distribution.* To ensure that the Program is available statewide, the author may wish to consider requiring the STO to ensure a reasonable rate of participation across all areas of the state.
- e) *Adoption of Program requirements.* State programs are generally subject to the Administrative Procedure Act (APA), which establishes rulemaking procedures and standards for state agencies in California. The requirements set forth in the APA are designed to provide the public with a meaningful opportunity to participate in the adoption of state regulations and to ensure that regulations are clear, necessary, and legally valid. Currently, of the two main housing programs under the STO, TCAC is not subject to the APA, while CDLAC is.

This bill requires the STO to consult with HCD and CalHFA, and authorizes the STO to consult with private lenders, in developing the Program. The author may wish to make development of regulations for this Program subject to the APA. Alternatively, the author may wish to require the STO to consult with other interested stakeholders and to conduct at least one public meeting prior to adopting Program regulations.

- f) *Outreach.* The author may wish to consider requiring the STO to conduct outreach activities, particularly in disadvantaged communities, to disseminate information about the Program to eligible homeowners.
  - g) *Program effectiveness.* The author may wish to consider requiring the STO to submit an annual report to the Legislature detailing progress toward the stated goal of creating 50,000 ADUs over the next five years, as well as the average income of participating homeowners and their renters.
- 8) *29.10 referral.* This bill originally required HCD to submit proposed small home building standards to the California Building Standards Commission for ADUs and homes of less than 800 square feet. It was amended on July 28, 2020 to remove those provisions and add the current language. Since this bill would also have been referred to the Governance and Finance Committee had it

been introduced earlier in the year, comments from that committee are included in this analysis.

According to the Governance and Finance Committee:

"California operates several loan loss reserve programs: the California Alternative Energy and Advanced Transportation Authority guarantees loans made under the Property Assessed Clean Energy program to support financing of energy or water efficiency property improvements, the California Pollution Control Financing Authority administers the Capital Access Program for Small Business, also known as CalCAP, which guarantees loans to small businesses, and the California Infrastructure and Economic Development Bank guarantees different kinds of loans under its Small Business Finance Center, among others. These programs reimburse lenders for some or all of their losses when borrowers default on qualifying loans, resulting in a broader extension of credit and lower interest rates than would be available but for these programs. Programs generally reimburse lenders from pre-existing trust funds or moneys appropriated by the Legislature; each program only guarantees as much loans based on overall default risk as can be supported by current resources.

AB 69 departs from this model by using the proceeds from the issuance of revenue bonds repaid by fees derived from lenders and borrowers under the bill's program to guarantee loans, which presents potential barriers for its program that do not apply to these other programs. First, issuing bonds takes time, and loans cannot be guaranteed under the bill until cash from a bond sale is available to do so. Second, investor demand for revenue bonds under this program is unclear. Governments around the world use revenue bonds to construct public infrastructure that generates direct revenues such as parking lots, bridges or roads which generate toll revenue, or mortgage revenue bonds for housing projects, and investors look directly to the revenues derived from these projects when deciding if, and at what price, to purchase a bond. If borrowers or lenders do not participate in AB 69's lending program, or if its underwriting requirements misprice default risk, investors purchasing an AB 69 bond may not be repaid without other forms of credit enhancement, which could pose too much risk for many investors."

#### **RELATED LEGISLATION:**

**SB 1400 (Umberg, 2020)** — would have authorized the issuance of \$500 million in general obligation bonds for ADU construction, subject to approval by voters in the next statewide general election. *This bill was dropped by the author.*

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

**POSITIONS:** (Communicated to the committee before noon on Thursday,  
July 30, 2020.)

**SUPPORT:**

Bay Area Council (Co-Sponsor)  
California State Treasurer Fiona Ma (Co-Sponsor)  
California Association of Realtors  
California YIMBY  
Generation Housing  
Habitat for Humanity California  
North Bay Leadership Council  
The Casita Coalition  
The Two Hundred

**OPPOSITION:**

None received.

**-- END --**