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

Bill No: SB 728 **Hearing Date:** 4/29/2021
Author: Hertzberg
Version: 4/15/2021
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Density Bonus Law: purchase of density bonus units by nonprofit housing organizations

DIGEST: This bill authorizes a qualified nonprofit housing organization to purchase a for-sale unit under density bonus law (DBL), as specified.

ANALYSIS:

Existing law:

- 1) Requires all cities and counties to adopt an ordinance that specifies how they will implement state DBL. Requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least one of the following:
 - a) 10% of the total units of a housing development for lower income households;
 - b) 5% of the total units of a housing development for very low-income households;
 - c) A senior citizen housing development or mobile home park;
 - d) 10% of the units in a common interest development for moderate-income households;
 - e) 10% of the total units for transitional foster youth, disabled veterans, or homeless persons;
 - f) 20% of the total units for lower-income students in a student housing development.

- 2) Requires the city or county to allow an increase in density on a sliding scale from 20% to 50%, depending on the percentage of units affordable to low- and very low-income households, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. Requires the increase in density on a sliding scale for moderate-income for-sale developments from 5% to 50% over the otherwise allowable residential density.
- 3) Provides that upon the request of a developer, a city, county, or city and 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 that if a project contains 100% affordable units and is within ½ mile of a major transit stop or houses persons with special needs or persons who are 62 years or older, the local government shall not impose a parking ratio.
- 5) 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 that include 100% of the units affordable to lower-income households.
- 6) Requires an applicant for a density bonus to agree to the continued affordability of all very low- and low-income units for 55 years or a longer period of time if required by the construction or mortgage financing assistance program,

mortgage issuance program, or rental subsidy program. Rents shall be set at an affordable rent.

- 7) Requires that an applicant for a density bonus ensure that the initial occupant of all for-sale units are persons and families of very low-, low- and moderate income, and that the units are offered at an affordable housing cost.

This bill:

- 1) Requires an applicant for a density bonus to agree that a for-sale unit meets either of the following:
 - a) The unit is initially occupied by a person or family of very low-, low-, or moderate income and offered at an affordable housing cost, or
 - b) The unit is purchased by a qualified nonprofit housing corporation pursuant to a specified recorded contract and includes all of the following:
 - i. A repurchase option that requires a subsequent purchaser of the property.
 - ii. An equity sharing agreement.
 - iii. Affordability restrictions on the sale and conveyance of the property that ensure that the property will be preserved for lower income housing for at least 45 years for owner occupied housing units and will be sold or resold to only persons of very low-, low-, or moderate-income.

COMMENTS

- 1) *Author's statement.* "While the State's Density Bonus Law has been amended multiple times in response to evolving housing conditions, California remains the epicenter of the American housing crisis. One in five California households spend half or more of their income on housing, the median cost of a home is more than two times the national average, and the state ranks 49th in the nation with a homeownership rate of 54 percent. Homeownership is a crucial foundation for helping low-income families find a path out of poverty. Yet as home prices continue to rise, many renters of all income levels – but especially those of low-and moderate- income – view homeownership as an unattainable goal. SB 728 authorizes developers and local governments, as an alternative to ensuring the initial occupant of a for-sale unit meets specified income requirements under the DBL, to ensure qualified nonprofit housing organizations can purchase the unit as well. The will allow nonprofits dedicated

to providing homeownership solutions for families with limited-incomes the unique opportunity to serve communities through the DBL, and further ensures the individual density bonus for owner-occupied or for-sale units remains affordable over time.”

- 2) *Density Bonus Law (DBL)*. Given California’s high land and construction costs for housing, it is extremely difficult for the private market to provide housing units that are affordable to low- and even moderate-income households. Public subsidy is often required to fill the financial gap on affordable units. DBL allows public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable units. Allowing more total units permits the developer to spread the cost of the affordable units more broadly over the market-rate units. The idea of DBL is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional subsidy.

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

To qualify for benefits under DBL, a proposed housing development must contain a minimum percentage of affordable housing. If one of these six options is met, a developer is entitled to a base increase in density for the project as a whole (referred to as a density bonus) and one regulatory incentive. Under DBL, a market rate developer gets density increases on a sliding scale based on the percentage of affordable housing included in the project. At the low end, a developer receives 20% additional density for 5% very low-income units, 20% density for 10% low-income units, and 5% additional density for moderate-income units. The maximum additional density permitted is 50% (in exchange for 15% very low-income units, 24% low-income units, and 44% moderate-income units). The developer also negotiates additional incentives and concessions, reduced parking, and design standard waivers with the local government. This helps developers reduce costs while enabling a local government to determine what changes make the most sense for that site and community.

- 3) *Providing explicit authorization for novel housing models: AB 587 (Friedman, Chapter 657, Statutes of 2019)*. Some local Habitat for Humanity affiliates have worked with local governments to provide two low-income housing units

on one parcel: a primary residence and an accessory dwelling unit (ADU). These units are built with a tenant-in-common restriction that, like the deed restrictions, remain in place even when the ADU is sold. This allows the land to remain affordable in perpetuity and offers additional homes to eligible families. AB 587, sponsored by Habitat for Humanity, provided explicit authorization for an ADU to be sold or conveyed separately from a private residence to a qualified buyer, under specified circumstances. Since the passage of that bill, at least one Habitat affiliate in Butte County, has used that authority to provide double the affordable housing per parcel, in an effort to rebuild following the 2018 Camp Fire. According to the sponsor, local governments have asserted that state authorization was critical, and as a result of AB 587, others – including Folsom, Sacramento, Los Angeles, and San Gabriel – are considering this model.

- 4) *Authorizing the sale of units to nonprofits.* According to the sponsor, a specific situation arose where developer was interested in using DBL to produce affordable owner-occupied units; Habitat for Humanity would then buy those units from the developer, take possession to apply an affordability covenant, and sell the unit to a qualified family. This process would allow the developer to sell the unit without having to expend additional resources to find qualified buyers and ensure that affordable unit remains affordable. During negotiations, however, the city attorney prohibited Habitat from acquiring the units because they were not a “qualified buyer” under density bonus law. Ultimately, Habitat was unable to acquire the units.

This bill would, as an alternative to ensuring the initial occupant of a for-sale unit meets specified income requirements under the DBL, authorize qualified nonprofit housing organizations to purchase the unit and maintain their affordability. According to the sponsor, several other cities and local Habitat affiliates would be interested in utilizing this new authorization should it become law.

Similar to AB 587, the sponsors note that explicit authorization in state law will allow locals to take advantage of a new affordable housing creation and preservation tool.

RELATED LEGISLATION:

SB 290 (Skinner, 2021) — makes various changes to DBL, including providing additional benefits to housing developments that include low-income rental and for-sale housing units, and moderate-income for-sale housing units. *This bill is pending in the Senate Appropriations Committee.*

AB 2345 (Gonzalez, Chapter 197, Statutes of 2020) — revised DBL to increase the maximum allowable density and the number of concessions and incentives a developer may seek.

AB 587 (Friedman, Chapter , Statutes of 2019) — allows for an accessory dwelling unit (ADU) to be sold or conveyed separately from the primary residence to a qualified buyer under specified circumstances.

AB 1763 (Chiu, Chapter 666, Statutes of 2019) — revised DBL to require a city or county to award a developer additional density, concessions and incentives, and height increases if 100% of the units in a development are restricted to lower-income households.

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

POSITIONS: (Communicated to the committee before noon on Friday, April 23, 2021.)

SUPPORT:

Habitat for Humanity California (Sponsor)
Housing Action Coalition
San Francisco Bay Area Planning and Urban Research Association (SPUR)

OPPOSITION:

None received

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