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

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**Bill No:** AB 571 **Hearing Date:** 6/17/2021  
**Author:** Mayes  
**Version:** 5/3/2021  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Alison Hughes

**SUBJECT:** Planning and zoning: density bonuses: affordable housing

**DIGEST:** This bill 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.

**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 the applicant shall receive a specified number of incentives or concessions depending on the percentage of units affordable to very low-, low-, and moderate income households.
- 4) Provides that, if permitted by a local ordinance, nothing shall be construed to prohibit a city, county or city and county from granting a density bonus greater than what is described in density bonus law for a development that meets the existing statutory requirements.

This bill 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.

#### **COMMENTS:**

- 1) *Author's statement.* "The state's Density Bonus Law has been underutilized for decades. Housing affordability continues to suffer and will not resolve if the trend to "kick the can down the road" persists. Impact and development fees significantly affect the overall cost of a project. These costs are often passed along to buyers in the form of higher home prices, especially in high demand markets. High impact and pre-development fees can also increase the amount of subsidy needed to build affordable housing units. It is time the state considers more concrete reductions in pre-development costs associated with the construction of affordable housing units in order to spur more development. AB 571 will prohibit imposing a housing affordability fee on deed restricted affordable units, as they are intended to be affordable to low, very low, and moderate-income families. It simply does not make sense to disincentive the construction of deed restricted affordable units within a density bonus application as we seek to encourage developers to make the maximum set aside possible within every application for a density bonus."
- 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) *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.

This bill would preclude a local government 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.

- 4) *Opposition.* According to Community Catalysts Preserving Local Control, “Density bonus laws don’t make sense and they don’t meet the need for adequate housing that is affordable to low-income residents.”
- 5) *Double-referral.* This bill was also referred to the Governance and Finance Committee.

**RELATED LEGISLATION:**

**SB 1085 (Skinner, 2020)** — would have made several changes to DBL, including a prohibition for local governments to impose specified fees on affordable units in a density bonus project. *That bill failed to receive a concurrence vote in the Senate.*

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

**POSITIONS:** (Communicated to the committee before noon on Friday, June 11, 2021.)

**SUPPORT:**

California Association of Realtors (Sponsor)  
American Planning Association, California Chapter  
California Apartment Association  
California Building Industry Association  
Circulate San Diego  
Livable California

**OPPOSITION:**

Community Catalysts Preserving Local Control

**-- END --**