

AMENDED IN SENATE MARCH 8, 2021

SENATE BILL

No. 15

Introduced by Senator Portantino

December 7, 2020

An act to add Chapter 2.9 (commencing with Section 50495) to Part 2 of Division 31 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 15, as amended, Portantino. Housing development: incentives: rezoning of idle retail sites.

Existing law establishes, among other housing programs, the Workforce Housing Reward Program, which requires the Department of Housing and Community Development to make local assistance grants to cities, counties, and cities and counties that provide land use approval to housing developments that are affordable to very low and low-income households.

This bill, upon appropriation by the Legislature in the annual Budget Act or other statute, would require the department to administer a program to provide incentives in the form of grants allocated as provided to local governments that rezone idle sites used for a big box retailer or a commercial shopping center to instead allow the development of ~~workforce housing~~. *housing, as defined*. The bill would define various terms for these purposes. In order to be eligible for a grant, the bill would require a local government, among other things, to apply to the department for an allocation of grant funds and provide documentation that it has met specified requirements, including certain labor-related requirements. The bill would make the allocation of these grants subject to appropriation by the Legislature in the annual Budget Act or other statute.

The bill would require the department to issue a Notice of Funding Availability for each calendar year in which funds are made available for these purposes. The bill would require that the amount of grant awarded to each eligible local government be equal to 7 times the average amount of annual sales and use tax revenue generated by each idle site identified in the local government's application over the 7 years immediately preceding the date of the local government's application, subject to certain modifications, and that the local government receive this amount in one lump-sum following the date of the local government's application. The bill, upon appropriation by the Legislature in the annual Budget Act or other statute, would authorize the department to review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards for this program and exempt those guidelines from the rulemaking provisions of the Administrative Procedure Act. *The bill would make its provisions operative on and after January 1, 2023.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.9 (commencing with Section 50495)
2 is added to Part 2 of Division 31 of the Health and Safety Code,
3 to read:

4
5 CHAPTER 2.9. RETAIL SITE REZONING INCENTIVES

6
7 50495. For purposes of this chapter:
8 (a) "Applicant" means a public agency or private entity that
9 submits an application to a local government to undertake a
10 ~~workforce-housing~~ *housing, as defined in subdivision (k),*
11 development project on sites rezoned pursuant to this chapter.
12 (b) "Big box retailer" means a store of greater than 75,000
13 square feet of gross buildable area that generates or previously
14 generated sales or use tax pursuant to the Bradley-Burns Uniform
15 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
16 7200) of Division 2 of the Revenue and Taxation Code.

(c) “Commercial shopping center” means a group of two or more stores that maintain a common parking lot for patrons of those stores.

(d) “Idle” means that at least 80 percent of the leased or rentable square footage of the big box retailer or commercial shopping center site is not occupied for at least a 12-month calendar period.

(e) “Local government” means a city, county, or city and county.

(f) “NOFA” means Notice of Funding Availability.

(g) “Project labor agreement” has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(h) “Sales and use tax revenue” means the cumulative amount of revenue generated by taxes imposed by a local government in accordance with both of the following laws:

(1) The Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code).

(2) The Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code).

(i) “Skilled and trained workforce” has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(j) (1) “Use by right” means that the local government’s review of ~~a workforce housing~~ *housing, as defined in subdivision (k), development* does not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

(2) A local ordinance may provide that “use by right” does not exempt the use from design review. However, that design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) ~~“Workforce housing”~~ “Housing” means an owner-occupied or rental housing development in which 100 percent of the

1 development project's total units, exclusive of a manager's unit
2 or units, are for lower income households, as defined in Section
3 50079.5, or for moderate-income households, as defined in Section
4 50053. Units in the development shall be offered at an affordable
5 housing cost, as defined in Section 50052.5, or at affordable rent,
6 as defined in Section 50053, except that the rent or sales price for
7 a moderate-income unit shall be at least 20 percent below the
8 market rate for a unit of similar size and bedroom count in the
9 same neighborhood in the city, county, or city and county in which
10 the housing development is located. The developer of the ~~workforce~~
11 housing shall provide the local government with evidence to
12 establish that the units meet the requirements of this subdivision.
13 All units, exclusive of any manager's unit or units, shall be
14 restricted as provided in this subdivision for at least the following
15 periods of time:

16 (A) Fifty-five years for units that are rented. However, the local
17 government may require that the rental units in the housing
18 development project be restricted to lower income households for
19 a longer period of time if that restriction is consistent with all
20 applicable regulatory requirements for state assistance.

21 (B) Forty-five years for units that are owner occupied. However,
22 the local government may require that owner-occupied units in
23 the housing development project be restricted to lower income
24 households for a longer period of time if that restriction is
25 consistent with all applicable regulatory requirements for state
26 assistance.

27 50495.2. Upon appropriation by the Legislature in the annual
28 Budget Act or other statute, the department shall administer a
29 program to provide incentives in the form of grants allocated in
30 accordance with this chapter to local governments that rezone idle
31 sites used for a big box retailer or a commercial shopping center
32 to instead allow the development of ~~workforce housing~~ *housing*,
33 *as defined in subdivision (k) of Section 50495*.

34 50495.4. In order to be eligible for a grant under this chapter,
35 a local government shall do all of the following:

36 (a) Rezone one or more idle sites used for a big box retailer or
37 commercial shopping center to allow ~~workforce housing~~ *housing*,
38 *as defined in subdivision (k) of Section 50495*, as a use by right.

39 (b) Approve and issue a certificate of occupancy for a ~~workforce~~
40 ~~housing~~ *housing, as defined in subdivision (k) of Section 50495*,

1 development on each site rezoned pursuant to subdivision (a) for
2 which the local government seeks an incentive pursuant to this
3 chapter.

4 (c) Impose the requirements described in Sections 50495.5 and
5 50495.5.1 on all applicants.

6 (d) Apply to the department for an allocation of grant funds and
7 provide documentation that it has complied with the requirements
8 of this section.

9 50495.5. For purposes of subdivision (c) of Section 50495.4,
10 a local government shall impose all of the following requirements
11 on all applicants:

12 (a) (1) For an applicant that is a public agency, the applicant
13 shall not prequalify or shortlist, or award a contract to, an entity
14 for the performance of any portion of the ~~workforce housing~~
15 *housing, as defined in subdivision (k) of Section 50495,*
16 development project unless the entity provides an enforceable
17 commitment to the applicant that the entity and its subcontractors
18 at every tier will use a skilled and trained workforce to perform
19 all work on the project or contract that falls within an
20 apprenticeable occupation in the building and construction trades.

21 (2) Paragraph (1) does not apply if any of the following
22 requirements are met:

23 (A) The public agency applicant has entered into a project labor
24 agreement that will bind all contractors and subcontractors
25 performing work on the project or contract to use a skilled and
26 trained workforce, and the entity agrees to be bound by that project
27 labor agreement.

28 (B) The project or contract is being performed under the
29 extension or renewal of a project labor agreement that was entered
30 into by the public agency applicant before January 1, ~~2021~~, 2023.

31 (C) The entity has entered into a project labor agreement that
32 will bind the entity and all of its subcontractors at every tier
33 performing the project or contract to use a skilled and trained
34 workforce.

35 (b) For an applicant that is a private entity, the applicant shall
36 do both of the following:

37 (1) Demonstrate to the local government that either of the
38 following is true:

39 (A) The entirety of the ~~workforce housing~~ *housing, as defined*
40 *in subdivision (k) of Section 50495,* development project is a public

1 work for purposes of Chapter 1 (commencing with Section 1720)
2 of Part 7 of Division 2 of the Labor Code.

3 (B) If the project is not in its entirety a public work, all
4 construction workers employed in the execution of the project will
5 be paid at least the general prevailing rate of per diem wages for
6 the type of work and geographic area, as determined by the Director
7 of Industrial Relations pursuant to Sections 1773 and 1773.9 of
8 the Labor Code, except that apprentices registered in programs
9 approved by the Chief of the Division of Apprenticeship Standards
10 may be paid at least the applicable apprentice prevailing rate.

11 (2) Demonstrate to the local government that a skilled and
12 trained workforce will be used to perform all construction work
13 on the project.

14 50495.5.1. (a) If a ~~workforce housing~~ *housing, as defined in*
15 *subdivision (k) of Section 50495*, development project is subject
16 to subparagraph (B) of paragraph (1) of subdivision (b) of Section
17 50495.5, then, for those portions of the project that are not a public
18 work, all of the following shall apply:

19 (1) The private entity applicant shall ensure that the prevailing
20 wage requirement is included in all contracts for the performance
21 of the work on the project.

22 (2) All contractors and subcontractors shall pay to all
23 construction workers employed in the execution of the work at
24 least the general prevailing rate of per diem wages, except that
25 apprentices registered in programs approved by the Chief of the
26 Division of Apprenticeship Standards may be paid at least the
27 applicable apprentice prevailing rate.

28 (3) (A) Except as provided in subparagraph (C), all contractors
29 and subcontractors shall maintain and verify payroll records
30 pursuant to Section 1776 of the Labor Code and make those records
31 available for inspection and copying as provided by that section.

32 (B) Except as provided in subparagraph (C), the obligation of
33 the contractors and subcontractors to pay prevailing wages may
34 be enforced by the Labor Commissioner through the issuance of
35 a civil wage and penalty assessment pursuant to Section 1741 of
36 the Labor Code, which may be reviewed pursuant to Section 1742
37 of the Labor Code, within 18 months after the completion of the
38 project, by an underpaid worker through an administrative
39 complaint or civil action, or by a joint labor-management
40 committee through a civil action under Section 1771.2 of the Labor

1 Code. If a civil wage and penalty assessment is issued, the
2 contractor, subcontractor, and surety on a bond or bonds issued to
3 secure the payment of wages covered by the assessment shall be
4 liable for liquidated damages pursuant to Section 1742.1 of the
5 Labor Code.

6 (C) Subparagraphs (A) and (B) do not apply if all contractors
7 and subcontractors performing work on the project are subject to
8 a project labor agreement that requires the payment of prevailing
9 wages to all construction workers employed in the execution of
10 the project and provides for enforcement of that obligation through
11 an arbitration procedure.

12 (4) Notwithstanding subdivision (c) of Section 1773.1 of the
13 Labor Code, the requirement that employer payments not reduce
14 the obligation to pay the hourly straight time or overtime wages
15 found to be prevailing shall not apply if otherwise provided in a
16 bona fide collective bargaining agreement covering the worker.
17 The requirement to pay at least the general prevailing rate of per
18 diem wages does not preclude use of an alternative workweek
19 schedule adopted pursuant to Section 511 or 514 of the Labor
20 Code.

21 (b) An applicant that is a private entity subject to paragraph (2)
22 of subdivision (b) of Section 50495.5 shall comply with all of the
23 following requirements for the ~~workforce housing~~ *housing, as*
24 *defined in subdivision (k) of Section 50495*, development project:

25 (1) The private entity applicant shall require in all contracts for
26 the performance of work that every contractor and subcontractor
27 at every tier will individually use a skilled and trained workforce
28 to complete the project.

29 (2) Every contractor and subcontractor shall use a skilled and
30 trained workforce to complete the project.

31 (3) (A) Except as provided in subparagraph (B), the private
32 entity applicant shall provide to the local government, on a monthly
33 basis while the project or contract is being performed, a report
34 demonstrating compliance with Chapter 2.9 (commencing with
35 Section 2600) of Part 1 of Division 2 of the Public Contract Code.
36 A monthly report provided to the local government pursuant to
37 this clause shall be a public record under the California Public
38 Records Act (Chapter 3.5 (commencing with Section 6250) of
39 Division 7 of Title 1 of the Government Code) and shall be open
40 to public inspection. A private entity applicant that fails to provide

1 a monthly report demonstrating compliance with Chapter 2.9
2 (commencing with Section 2600) of Part 1 of Division 2 of the
3 Public Contract Code shall be subject to a civil penalty of ten
4 thousand dollars (\$10,000) per month for each month for which
5 the report has not been provided. Any contractor or subcontractor
6 that fails to use a skilled and trained workforce shall be subject to
7 a civil penalty of two hundred dollars (\$200) per day for each
8 worker employed in contravention of the skilled and trained
9 workforce requirement. Penalties may be assessed by the Labor
10 Commissioner within 18 months of completion of the project using
11 the same procedures for issuance of civil wage and penalty
12 assessments pursuant to Section 1741 of the Labor Code, and may
13 be reviewed pursuant to the same procedures in Section 1742 of
14 the Labor Code. Penalties shall be paid to the State Public Works
15 Enforcement Fund.

16 (B) Subparagraph (A) does not apply if all contractors and
17 subcontractors performing work on the project are subject to a
18 project labor agreement that requires compliance with the skilled
19 and trained workforce requirement and provides for enforcement
20 of that obligation through an arbitration procedure.

21 50495.6. (a) Upon appropriation by the Legislature in the
22 annual Budget Act or other statute for purposes of this chapter,
23 the department shall allocate a grant to each local government that
24 meets the criteria specified in Section 50495.4 in an amount
25 determined pursuant to subdivision (b). For each calendar year in
26 which funds are made available for purposes of this chapter, the
27 department shall issue a NOFA for the distribution of funds to a
28 local government during the 12-month period subsequent to the
29 NOFA. The department shall accept applications from applicants
30 at the end of the 12-month period.

31 (b) The amount of grant provided to each eligible local
32 government shall be as follows:

33 (1) Subject to paragraphs (2) and (3), the amount of the grant
34 shall be equal to seven times the average amount of annual sales
35 and use tax revenue generated by each idle site identified in the
36 local government's application that meets the criteria specified in
37 subdivisions (a) and (b) of Section 50495.4 over the seven years
38 immediately preceding the date of the local government's
39 application.

1 (2) For any idle big box retailer or commercial shopping center
2 site rezoned by a local government in accordance with subdivision
3 (a) of Section 50495.4 to allow mixed uses, the amount of grant
4 pursuant to paragraph (1) shall be reduced in proportion to the
5 percentage of the square footage of the development that is used
6 for a use other than ~~workforce housing~~, *housing, as defined in*
7 *subdivision (k) of Section 50495.*

8 (3) If for any NOFA the amount of funds made available for
9 purposes of this chapter is insufficient to provide each eligible
10 local government with the full amount specified in paragraphs (1)
11 and (2), based on the number of applications received, the
12 department shall reduce the amount of grant funds awarded to each
13 eligible local government proportionally.

14 (c) The department shall allocate the amount determined
15 pursuant to subdivision (b) to each eligible local government in
16 one lump-sum following the date of the local government's
17 application.

18 50495.8. Upon appropriation by the Legislature in the annual
19 Budget Act or other statute, the department may review, adopt,
20 amend, and repeal guidelines to implement uniform standards or
21 criteria that supplement or clarify the terms, references, or standards
22 set forth in this chapter. Any guidelines or terms adopted pursuant
23 to this chapter shall not be subject to Chapter 3.5 (commencing
24 with Section 11340) of Part 1 of Division 3 of Title 2 of the
25 Government Code.

26 50495.9. *This chapter shall be operative on and after January*
27 *1, 2023.*