

ASSEMBLY THIRD READING

AB 2011 (Wicks, et al.)

As Amended May 11, 2022

Majority vote

SUMMARY

Establishes the Affordable Housing and High Road Jobs Act of 2022 (Act), to create a ministerial, streamlined approval process for 100% affordable housing in commercially-zoned areas and for mixed-income housing along commercial corridors.

Major Provisions

- 1) *Affordable Housing*: Allows 100% affordable housing projects to be a use by right, and subject to a streamlined, ministerial review process, notwithstanding any inconsistent provision of a local government's plans, ordinances, or regulations, if it meets all of the following provisions:
 - a) *Affordability provisions*: One hundred percent of the units within the development project must be dedicated to lower income households at an affordable rent or, as for-sale homes, an affordable cost. The units must be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units.
 - b) *Location provisions*:
 - i) It is within a zone where office, retail, or parking are a principally permitted use;
 - ii) It is located within a city where the city boundaries include some portion of either an urbanized area or urban cluster, or in an unincorporated area, and the legal parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster, as specified;
 - iii) At least 75% of the site perimeter adjoins parcels that are developed with urban uses, as specified;
 - iv) It is not adjacent to any site where more than one-third of the square footage on the site is dedicated to industrial use, as specified; and
 - v) It is not on environmentally unsafe or sensitive areas, as specified, such as wetlands, a high or very high fire severity zone unless the site has adopted fire hazard mitigation measures required by existing building standards, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement.
 - c) *Objective Design Standards*:
 - i) It is a multifamily housing project;
 - ii) At least 67% of the square footage of the new construction associated with the project is designated for residential use;

- iii) The residential density will meet or exceed the applicable density deemed appropriate to accommodate housing for lower income households in that jurisdiction as specified in Housing Element Law. Generally, that density is 30 units per acre in urban areas, 20 units per acre in suburban areas, and 10 units per acre in rural areas;
- iv) It meets the applicable objective zoning standards, objective subdivision standards, and objective design review standards, as specified, for the zone that allows residential use at a greater density between the existing zoning designation for the parcel and the closest parcel that allows residential use at a density that meets the density requirements described above, in iii; and
- v) The applicable standards are those in effect at the time that the development is submitted to the local government.

d) Labor Provisions:

- i) A proponent of a development project approved pursuant to the provisions of this bill must require, in contracts with construction contractors, that all of the labor provisions of this bill's standards will be met in project construction. The proponent must certify this to the local government;
- ii) A development that is not in its entirety a public work, as specified, must be subject to all of the following wage provisions:
 - (1) All construction workers employed in the execution of the development must be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as specified, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate;
 - (2) The development proponent must ensure that the prevailing wage requirement is included in all contracts for the performance of the work for those portions of the development that are not a public work; and
 - (3) All contractors and subcontractors for those portions of the development that are not a public work must maintain and verify payroll records, as specified, and make those records available for inspection and copying. This requirement does not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure.
- iii) The obligation of the contractors and subcontractors to pay prevailing wages pursuant to this bill are subject to the following enforcement provisions:
 - (1) They may be enforced by The Labor Commissioner, an underpaid worker, and a joint labor-management committee through a civil action, as specified; and

- (2) These enforcement provisions do not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure.
 - iv) The requirement that the employer pay prevailing wages does not apply to those portions of development that are not a public work if otherwise provided in a bona fide collective bargaining agreement covering the worker;
 - v) For a development of 50 or more housing units, the development proponent must require in contracts with construction contractors, and must certify to the local government, that each contractor of any tier who will employ construction craft employees or will let subcontracts for at least 1,000 hours must ensure all of the following:
 - (1) A contractor with construction craft employees must either participate in an apprenticeship program approved by the State of California Division of Apprenticeship Standards, as specified, or request the dispatch of apprentices from a state-approved apprenticeship program, as specified. A contractor without construction craft employees must show a contractual obligation that its subcontractors meet these requirements.
 - (2) Each contractor with construction craft employees must make health care expenditures for each employee, as specified. A contractor without construction craft employees must show a contractual obligation that its subcontractors comply with this requirement. Qualifying expenditures are credited toward compliance with prevailing wage payment requirements.
 - (3) A construction contractor is deemed in compliance with the requirements of A and B, above, if it is signatory to a valid collective bargaining agreement that requires utilization of registered apprentices and expenditures on health care for employees and dependents; and
 - (4) The development proponent is subject to reporting requirements, as specified.
- 2) *Mixed-Income Housing*: Allows mixed-income housing projects to be a use by right, and subject to a streamlined, ministerial review process, notwithstanding any inconsistent provision of a local government's plans, ordinances, or regulations, if it meets all of the following provisions:
- a) Affordability provisions:
 - i) A rental housing development must have a recorded deed restriction that ensures, at a minimum, that for a period of 55 years, 15% of the units shall be set at an affordable rent to lower income households;
 - ii) An owner-occupied housing development must have a recorded deed restriction that ensures, at a minimum, either of the following affordability criteria for a period of 45 years:

- (1) Thirty percent of the units must be offered at an affordable housing cost to moderate-income households; or
 - (2) Fifteen percent of the units must be offered at an affordable housing cost to lower income households.
- iii) If the amount of affordable housing required by a local inclusionary housing ordinance exceeds that of this section, then the project must abide by the local inclusionary housing ordinance.
- b) Location provisions:
- i) The project site meets all of the locational provisions for 100% affordable housing projects, as described above;
 - ii) The project site abuts a commercial corridor, which is a road that is not a freeway that has a right-of-way of at least 70 and not greater than 150 feet;
 - iii) The project site has a frontage along the commercial corridor of a minimum of 50 feet;
 - iv) The project site is not greater than 20 acres; and
 - v) The development would not require the demolition of:
 - (1) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income;
 - (2) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power;
 - (3) Housing that has been occupied by tenants within the past 10 years, excluding any manager's units. This provision includes sites previously used for housing that were occupied by tenants, excluding any manager's units, that was demolished within 10 years before the development proponent submits an application pursuant to this bill; and
 - (4) A historic structure that was placed on a national, state, or local historic register.
- c) Objective Design Standards:
- i) It is a multifamily housing project;
 - ii) At least 67% of the square footage of the new construction associated with the project is designated for residential use;
 - iii) The minimum residential density for the development ranges between 20 and 80 units per acre, depending on the type of jurisdiction, size of the site, width of the abutting commercial corridor, and proximity to major transit, as specified;

- iv) The height limit applicable to the housing development must be the greater of the following:
 - (1) The height allowed on the parcel by the local government;
 - (2) For sites on a commercial corridor of less than 100 feet in width, 35 feet;
 - (3) For sites on a commercial corridor of 100 feet in width or greater, 45 feet;
 - (4) Notwithstanding B. and C. above, for sites within one-half mile of a major transit stop, 65 feet.
 - v) The project meets setback requirements that focus the development along the commercial corridors, and away from the rear of the property, as specified;
 - vi) No parking can be required, except that this bill does not reduce, eliminate, or preclude the enforcement of any requirement to provide bicycle parking, electric vehicle supply equipment installed parking spaces, or parking spaces that are accessible to persons with disabilities that would have otherwise applied to the development;
 - vii) It meets the applicable objective zoning standards, objective subdivision standards, and objective design review standards, as specified, for the zone that allows residential use at the residential density determined pursuant to iii, above. If no zone exists that allows such a residential density, the applicable standards are those for the zone that allows the greatest density within the city, county, or city and county; and
 - viii) The applicable standards are those in effect at the time that the development is submitted to the local government.
- d) Labor Provisions: Same as required for 100% affordable projects, as described above.
- 3) Local review process: For both 100% affordable housing and mixed-income housing projects, the following local review process applies:
- a) The local government's determination of whether the proposed development is in conflict with any of the objective planning standards specified by this bill must occur as follows:
 - i) If the local government determines that the proposed development is in conflict with any of the objective planning standards specified by this bill, it must provide the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, within specified timeframes; and
 - ii) If the local government fails to provide the required documentation, the development satisfies the required objective planning standards.
 - b) Design review of the development may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as follows:

- i) It must be objective;
 - ii) It must be strictly focused on assessing compliance with criteria required for streamlined, ministerial review of projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submittal of the development to the local government;
 - iii) It must be broadly applicable to developments within the jurisdiction;
 - iv) It must not in any way inhibit, chill, or preclude the ministerial approval provided by this bill; and
 - v) It must be completed within specified timeframes.
- 4) Severability: The provisions of this bill are not severable, except for the health care provision described in 1)d), above.

COMMENTS

California's Housing Crisis: California is in the midst of a housing crisis. Only 24% of households can afford to purchase the median priced single-family home – 50% less than the national average, and 33% less than at the start of the pandemic. Over half of renters – and 80% of low-income renters – are "rent burdened," in households paying more than 30% of their income toward housing, which means they have less to pay for other essentials such as food, transportation, and health care. In 2020, over 160,000 Californians experienced homelessness on a given night. Californians rank housing affordability and homelessness as the two most important issues for the state to address.

A major cause of our housing crisis is the mismatch between the supply of housing and the need for housing. While there are various estimates of the size of this mismatch, they all concur that the deficit is in the millions of units. The Statewide Housing Plan adopted by HCD earlier this year, determined that, to address this mismatch, in the next eight years, California needs approximately 2.5 million units of housing, including one million units affordable to lower income households. That would require production of over 300,000 units a year. According to HCD, the state needs 180,000 units of housing built a year to keep up with demand – including about 80,000 units of housing affordable to lower-income households. By contrast, production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing. This underproduction has further exacerbated our longstanding housing crisis.

There are myriad reasons that supply has not kept pace with demand, including that:

- 1) The demand for housing in California has been strong for decades;
- 2) There are limited places to build;
- 3) Local governments have made it difficult to build housing; and
- 4) Housing is expensive to build.

Increasing the Affordability of Housing through the Affordable Housing and High Road Jobs Act of 2022: This bill, the Affordable Housing and High Road Jobs Act of 2022, is intended to build on and greatly accelerate the recent efforts by the state to facilitate the construction of more affordable housing. It would allow do so as follows:

Approval process:

This bill would require housing to be "by right" if it conforms to the provisions below regarding affordability, location, objective standards, and labor. In being by right, it would not be subject to a local government's discretionary approval process and would be exempt from the California Environmental Quality Act. Local governments would be able to apply objective standards and design review processes as long as they do not conflict with the provisions in the bill and do not preclude development of the housing.

Affordability requirements:

This bill would require at least 15% of new units be affordable to lower-income households, generally defined as those making 80% of the area median income (AMI) or less. Affordable units would be subject to a recorded deed restriction for a period of 55 years for rental units and 45 years for owner-occupied units. Mixed-income, for-sale projects could, alternatively, provide least 30% of the units at affordable levels to moderate-income households (generally defined as those making between 80-120% AMI). The option for a for-sale project to direct 30% of its units to moderate-income households could result in a substantial increase in homeownership opportunities for that demographic.

Location requirements:

This bill facilitates the development of two kinds of housing – 100-percent affordable housing, and mixed-income housing. To qualify to utilize the by right provisions of this bill, both kinds of housing projects must be located in zones where office, retail, or parking are a principally permitted use. Mixed-income housing projects would be limited to sites that abut a "commercial corridor," which is a local road with a right-of-way of 70 to 150 feet (generally, four to six lanes). These commercial corridors are typically the location of strip retail centers and parking lots. Directing new development along these existing thoroughfares can facilitate transit use and other non-vehicular modes of transportation.

By allowing housing in zones where residential development may not currently be permitted, this bill expands the potential sites where housing can be developed, while directing development away from existing residential neighborhoods – in particular, existing single-family neighborhoods.

This bill includes provisions that would preclude development on environmentally unsafe or sensitive area, per previously established objective standards. It would also require development to occur within infill areas, which would help reduce commutes and, commensurately, greenhouse gas emissions.

To protect existing communities, projects would not be allowed to demolish existing housing, with the exception of housing that is owner-occupied by a higher income household that chooses to sell their property to enable a development of greater density. Additionally, the development could not lead to the demolition of a historic structure. Finally, site within existing specific plan

areas would not be subject to this bill if the specific plan does not allow housing on the existing site.

Objective Standards:

To utilize the by right provisions of this bill, housing projects would need to meet the objective standards specified in the bill. All projects would need to be multi-family projects where no more than one-third of the space can be for a non-residential use.

For 100% affordable projects, the residential density would need to meet or exceed the density considered geographically appropriate for affordable housing projects in Housing Element Law. Generally, that density is 30 units per acre in urban areas, 20 units per acre in suburban areas, and 10 units per acre in rural areas. The site must otherwise meet the local government's height limits, objective zoning standards, and objective design review standards.

Mixed-income housing projects would need to meet or exceed the density and height standards in the table below. These standards are distinguished by the type of community, width of the commercial corridor, and proximity to transit. The local government may allow higher densities and height limits at their discretion.

Location	Metropolitan Jurisdiction		Non-Metropolitan Jurisdiction	
	Minimum Project Density	Minimum Project Height	Minimum Project Density	Minimum Project Height
Commercial corridors with a width of 70' to 100'	40 units/acre	35 feet	30 units/acre	35 feet
Commercial corridors with a width of 100' to 150'	60 units/acre	45 feet	50 units/acre	45 feet
Commercial corridors within ½ mile of a major transit stop	80 units/acre	65 feet	70 units/acre	65 feet
Site of less than one acre	30 units/acre	As applicable per street width	20 units/acre	As applicable per street width

Mixed-income projects must meet specified setback standards regarding any frontages along the commercial corridor, any side street, and rear property lines. These setback standards are designed to focus the development along the commercial corridors, and away from the rear of the property.

The bill does not allow a local government to require parking for mixed-income projects, except that projects must meet requirements around accessible parking for people with disabilities, electric vehicle parking spaces, and bicycle parking. Developers would be allowed to determine the amount of parking needed to meet the demands of the new residents.

California's Construction Workforce Deficit: While the construction of 300,000 units a year may be difficult to conceive, it was a reality not that long ago. During California's post-World War II boom, approximately 300,000 units were built per year. Between 1975 – 1990, nearly 200,000 units were built a year. That number is now less than 100,000 units a year.

As discussed above, there are numerous reasons for the sharp decline in housing production. These reasons alone could have led to a reduction in the construction workforce. But, in addition, the 2008 Great Recession, led to a steep decline in the workforce as construction ceased and workers moved to other states to find jobs. There are now just over 100,000 residential construction workers in the state.

The remaining workforce has also been deskilled, due to a sharp decline in the pay and benefits associated with homebuilding jobs. The construction workforce used to produce 1.4 units per worker per year but has been below 1.0 units per worker per year for the past 15 years.

Not only is the workforce smaller and less skilled than it needs to be, it is not necessarily well positioned for growth, as it is difficult to attract new workers. The work is physically demanding and can require odd and long hours, both at work and commuting to work. It can be economically challenging as well, as construction work is seasonal and vulnerable to economic downturns, with workers face twice the earnings volatility. The pay and benefits are often not attractive enough to overcome those risks, as residential construction workers earn 24% less per year than other jobs, and less than half have health insurance coverage at work. A significant number of workers are misclassified as independent contractors, which reduces their earnings by about a third. Wage theft is an even more substantial issue, as paying workers off the books is a common practice in construction, resulting in those workers having their earnings reduced in half. Finally, the traditional pathways to the construction workforce have been eroded – high schools have less vocational training courses, federal policy has restricted the influx of new immigrants, and high housing costs dissuade workers from moving to California from other states.

Rebuilding the Residential Workforce through the Affordable Housing and High Road Jobs Act of 2022: This bill would make it easier to build housing, ensures that the workers who build that housing are well compensated, and provides opportunity for job training to grow the skilled construction workforce.

This bill would require compensation consistent with standards in place for public works projects by requiring projects to pay prevailing wages. The prevailing wages are the most common wage found in a region for a construction craft, and are usually based on rates specified in collective bargaining agreements between employers and unions. Prevailing wages are established by the Director of the Department of Industrial Relations (DIR), according to the type of work and location of the project, and published on DIR's website. The prevailing wage encompasses an hourly pay, as well as compensation for other benefits should the employer not provide them, including health care, vacation, and pension.

This bill includes an enforcement component by the Labor Commissioner, an underpaid workers, or a joint labor-management cooperation committee established under federal law. These provisions would help bolster enforcement capacity of the labor standards and help ameliorate concerns about wage theft.

This bill requires that all contractors on projects of 50 or more units participate in a state-approved apprenticeship program or request the dispatch of apprentices from a program. Construction trades apprenticeships result in the elevation of most participating construction workers' wages to living wage levels. As such, this provision would help ensure that these projects train the next generation of skilled craftspeople, so that over time the residential construction workforce is large enough to build the housing we need to end the housing crisis.

This bill allows for a locally negotiated Collective Bargaining Agreement to supersede the labor provisions in the bill. Collective Bargaining Agreements are agreements reached between the employer and the labor union that will govern the employment for the employee-members of that labor union.

According to the Author

"This bill combines some of the best ideas advanced in the Legislature over the last several years for promoting affordable housing development with a requirement to create 'high road' jobs. To effectively take on our state's housing issues, I firmly believe we need to do both. This legislation gives us all the opportunity to work together toward our shared goal: Building more affordable housing for struggling Californians, while also growing the thriving, high-wage construction workforce every community needs."

Arguments in Support

Supporters of the bill include groups that represent construction workers, groups that support the development of affordable housing, and groups that support an overall increase in the housing supply.

Groups that represent construction workers, including the Northern California Regional Conference of Carpenters, the Southwest Regional Conference of Carpenters, and affiliated groups, argue that the prevailing wage requirements and enforcement provisions in the bill would benefit workers while the housing provisions in the bill would help put those workers to work. According to the California Conference of Carpenters (a co-sponsor of the bill), the bill "will open the door to middle-class, blue-collar careers for young workers who will actually be able to live in, and eventually even own, the affordable housing they build."

Groups that support the development of affordable housing, including the California Housing Consortium (a co-sponsor of the bill) argue that the bill would rapidly accelerate the production of affordable housing. They write that the bill "will expand climate-friendly infill affordable housing opportunities for struggling families, seniors, workers, and veterans – while also growing a thriving, well-paid, middle-class construction workforce."

Groups that support an overall increase in the housing supply argue that the bill is necessary to help overcome the state's deficit of 2.5 million housing units. According to the California Apartment Association, "By opening new sites to housing, AB 2011 would rapidly accelerate housing production at all income levels – particularly for lower income Californians."

Arguments in Opposition

Opponents of this bill include groups that represent construction workers and cities.

The State Building and Construction Trades Council (SBCTC) and affiliated groups, argue that the bill should require the utilization of a skilled and trained workforce, as defined in labor law, that would in effect require a certain percentage of each construction craft and trade to be unionized unless the project is subject to a Project Labor Agreement. They argue that, absent these provisions, the bill provides a path to developer profits with little protections for workers and meaningful input from community members. According to the SBCTC, "We remain opposed to any effort that would create a statewide right to develop mostly market-rate and luxury housing without, at a very minimum, basic community protections, including the requirement to use a skilled and trained workforce and pay area prevailing wages."

The cities in opposition to the bill argue that it would remove local control and the ability of cities to determine the adequacy of sites for housing and the ability to provide affiliated infrastructure. They also express concern over a potential reduction in tax revenue from the loss of commercial properties.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Estimated costs of an unknown amount, likely ranging from the low-hundreds of thousands of dollars to the low millions of dollars ongoing, to the Department of Industrial Relations (DIR) for increased oversight of new public works activities, for which prevailing wage must be paid to workers (Labor Enforcement and Compliance Fund). The Division of Labor Standards Enforcement investigates complaints and imposes penalties, while DIR's Office of the Director's Legal Unit hears appeals. Actual costs will depend on the number of qualifying projects under this bill and the corresponding increase in the number of workers paid prevailing wage. Although the number of qualifying projects under this bill is unknown, it is reasonable to anticipate additional complaints and resulting enforcement activities.
- 2) HCD estimates ongoing General Fund (GF) costs of \$204,000 annually, for one additional staff to provide ongoing technical assistance to local jurisdictions for rezoning required by the bill, and to undertake necessary enforcement activities.
- 3) HCD estimates \$102,000 (GF), in contract costs for each of fiscal years 2023-24 and 2024-25, to develop and revise guidelines for developers and local jurisdictions. HCD indicates the guidelines will need to be revised in the second year of implementation.
- 4) One-time and ongoing costs to local governments of an unknown amount, but potentially significant in the short term, to meet the new requirements in the bill. These costs are potentially reimbursable by the state, subject to a determination by the Commission on State Mandates.

VOTES

ASM HOUSING AND COMMUNITY DEVELOPMENT: 7-1-0

YES: Wicks, Carrillo, Gabriel, Kalra, Kiley, Quirk-Silva, Ward

NO: Seyarto

ASM APPROPRIATIONS: 11-1-4

YES: Holden, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow

ABS, ABST OR NV: Bryan, Megan Dahle, Davies, Fong

UPDATED

VERSION: May 11, 2022

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