

Introduced by Senator Wiener

(Coauthors: Senators Caballero, Hueso, Moorlach, and Skinner)

(Coauthors: Assembly Members Burke, Kalra, Kiley, Low,
Robert Rivas, Ting, and Wicks)

December 3, 2018

An act to add Chapter 4.35 (commencing with Section 65918.50) to Division 1 of Title 7 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as introduced, Wiener. Planning and zoning: housing development: equitable communities incentive.

Existing law, known as the Density Bonus Law, requires, when an applicant proposes a housing development within the jurisdiction of a local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or for the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for very low, low-, or moderate-income households or qualifying residents.

This bill would require a city, county, or city and county to grant upon request an equitable communities incentive when a development proponent seeks and agrees to construct a residential development, as defined, that satisfies specified criteria, including, among other things, that the residential development is either a job-rich housing project or a transit-rich housing project, as those terms are defined; the site does not contain, or has not contained, housing occupied by tenants or accommodations withdrawn from rent or lease in accordance with specified law within specified time periods; and the residential development complies with specified additional requirements under

existing law. The bill would require that a residential development eligible for an equitable communities incentive receive waivers from maximum controls on density and automobile parking requirements greater than 0.5 parking spots per unit, up to 3 additional incentives or concessions under the Density Bonus Law, and specified additional waivers if the residential development is located within a ½-mile or ¼-mile radius of a major transit stop, as defined. The bill would authorize a local government to modify or expand the terms of an equitable communities incentive, provided that the equitable communities incentive is consistent with these provisions.

The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities. The bill would also declare the intent of the Legislature to delay implementation of this bill in sensitive communities, as defined, until July 1, 2020, as provided.

By adding to the duties of local planning officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Chapter 4.35 (commencing with Section
2 65918.50) is added to Division 1 of Title 7 of the Government
3 Code, to read:

4
5 CHAPTER 4.35. EQUITABLE COMMUNITIES INCENTIVES

6
7 65918.50. For purposes of this chapter:
8 (a) “Affordable” means available at affordable rent or affordable
9 housing cost to, and occupied by, persons and families of extremely
10 low, very low, low, or moderate incomes, as specified in context,
11 and subject to a recorded affordability restriction for at least 55
12 years.

1 (b) “Development proponent” means an applicant who submits
2 an application for an equitable communities incentive pursuant to
3 this chapter.

4 (c) “Eligible applicant” means a development proponent who
5 receives an equitable communities incentive.

6 (d) “FAR” means floor area ratio.

7 (e) “High-quality bus corridor” means a corridor with fixed
8 route bus service that meets all of the following criteria:

9 (1) It has average service intervals of no more than 15 minutes
10 during the three peak hours between 6 a.m. to 10 a.m., inclusive,
11 and the three peak hours between 3 p.m. and 7 p.m., inclusive, on
12 Monday through Friday.

13 (2) It has average service intervals of no more than 20 minutes
14 during the hours of 6 a.m. to 10 a.m., inclusive, on Monday through
15 Friday.

16 (3) It has average intervals of no more than 30 minutes during
17 the hours of 8 a.m. to 10 p.m., inclusive, on Saturday and Sunday.

18 (f) “Job-rich housing project” means a residential development
19 within an area identified by the Department of Housing and
20 Community Development and the Office of Planning and Research,
21 based on indicators such as proximity to jobs, high area median
22 income relative to the relevant region, and high-quality public
23 schools, as an area of high opportunity close to jobs. A residential
24 development shall be deemed to be within an area designated as
25 job-rich if both of the following apply:

26 (1) All parcels within the project have no more than 25 percent
27 of their area outside of the job-rich area.

28 (2) No more than 10 percent of residential units or 100 units,
29 whichever is less, of the development are outside of the job-rich
30 area.

31 (g) “Local government” means a city, including a charter city,
32 a county, or a city and county.

33 (h) “Major transit stop” means a site containing an existing rail
34 transit station or a ferry terminal served by either bus or rail transit
35 service.

36 (i) “Residential development” means a project with at least
37 two-thirds of the square footage of the development designated
38 for residential use.

39 (j) “Sensitive community” means an area identified by the
40 Department of Housing and Community Development, in

1 consultation with local community-based organizations in each
2 region, as an area vulnerable to displacement pressures, based on
3 indicators such as percentage of tenant households living at, or
4 under, the poverty line relative to the region.

5 (k) "Tenant" means a person residing in any of the following:

6 (1) Residential real property rented by the person under a
7 long-term lease.

8 (2) A single-room occupancy unit.

9 (3) An accessory dwelling unit that is not subject to, or does
10 not have a valid permit in accordance with, an ordinance adopted
11 by a local agency pursuant to Section 65852.22.

12 (4) A residential motel.

13 (5) Any other type of residential property that is not owned by
14 the person or a member of the person's household, for which the
15 person or a member of the person's household provides payments
16 on a regular schedule in exchange for the right to occupy the
17 residential property.

18 (l) "Transit-rich housing project" means a residential
19 development the parcels of which are all within a one-half mile
20 radius of a major transit stop or a one-quarter mile radius of a stop
21 on a high-quality bus corridor. A project shall be deemed to be
22 within a one-half mile radius of a major transit stop or a one-quarter
23 mile radius of a stop on a high-quality bus corridor if both of the
24 following apply:

25 (1) All parcels within the project have no more than 25 percent
26 of their area outside of a one-half mile radius of a major transit
27 stop or a one-quarter mile radius of a stop on a high-quality bus
28 corridor.

29 (2) No more than 10 percent of the residential units or 100 units,
30 whichever is less, of the project are outside of a one-half mile
31 radius of a major transit stop or a one-quarter mile radius of a stop
32 on a high-quality bus corridor.

33 65918.51. (a) A local government shall, upon request of a
34 development proponent, grant an equitable communities incentive,
35 as specified in Section 65918.53, when the development proponent
36 seeks and agrees to construct a residential development that
37 satisfies the requirements specified in Section 65918.52.

38 (b) It is the intent of the Legislature that, absent exceptional
39 circumstances, actions taken by a local legislative body that

1 increase residential density not undermine the equitable
2 communities incentive program established by this chapter.

3 65918.52. In order to be eligible for an equitable communities
4 incentive pursuant to this chapter, a residential development shall
5 meet all of the following criteria:

6 (a) The residential development is either a job-rich housing
7 project or transit-rich housing project.

8 (b) The residential development is located on a site that, at the
9 time of application, is zoned to allow housing as an underlying
10 use in the zone, including, but not limited to, a residential,
11 mixed-use, or commercial zone, as defined and allowed by the
12 local government.

13 (c) (1) If the local government has adopted an inclusionary
14 housing ordinance requiring that the development include a certain
15 number of units affordable to households with incomes that do not
16 exceed the limits for moderate-income, lower income, very low
17 income, or extremely low income specified in Sections 50079.5,
18 50093, 50105, and 50106 of the Health and Safety Code, and that
19 ordinance requires that a new development include levels of
20 affordable housing in excess of the requirements specified in
21 paragraph (2), the residential development complies with that
22 ordinance.

23 (2) If the local government has not adopted an inclusionary
24 housing ordinance, as described in paragraph (1), and the residential
25 development includes ____ or more residential units, the residential
26 development includes onsite affordable housing for households
27 with incomes that do not exceed the limits for extremely low
28 income, very low income, and low income specified in Sections
29 50093, 50105, and 50106 of the Health and Safety Code. It is the
30 intent of the Legislature to require that any development of ____
31 or more residential units receiving an equitable communities
32 incentive pursuant to this chapter include housing affordable to
33 low, very low or extremely low income households, which, for
34 projects with low or very low income units, are no less than the
35 number of onsite units affordable to low or very low income
36 households that would be required pursuant to subdivision (f) of
37 Section 65915 for a development receiving a density bonus of 35
38 percent.

39 (d) The site does not contain, or has not contained, either of the
40 following:

1 (1) Housing occupied by tenants within the seven years
2 preceding the date of the application, including housing that has
3 been demolished or that tenants have vacated prior to the
4 application for a development permit.

5 (2) A parcel or parcels on which an owner of residential real
6 property has exercised his or her rights under Chapter 12.75
7 (commencing with Section 7060) of Division 7 of Title 1 to
8 withdraw accommodations from rent or lease within 15 years prior
9 to the date that the development proponent submits an application
10 pursuant to this chapter.

11 (e) The residential development complies with all applicable
12 labor, construction employment, and wage standards otherwise
13 required by law and any other generally applicable requirement
14 regarding the approval of a development project, including, but
15 not limited to, the local government’s conditional use or other
16 discretionary permit approval process, the California
17 Environmental Quality Act (Division 13 (commencing with Section
18 21000) of the Public Resources Code), or a streamlined approval
19 process that includes labor protections.

20 (f) The residential development complies with all other relevant
21 standards, requirements, and prohibitions imposed by the local
22 government regarding architectural design, restrictions on or
23 oversight of demolition, impact fees, and community benefits
24 agreements.

25 (g) The equitable communities incentive shall not be used to
26 undermine the economic feasibility of delivering low-income
27 housing under the state density bonus program or a local
28 implementation of the state density bonus program, or any locally
29 adopted program that puts conditions on new development
30 applications on the basis of receiving a zone change or general
31 plan amendment in exchange for benefits such as increased
32 affordable housing, local hire, or payment of prevailing wages.

33 65918.53. (a) A residential development that meets the criteria
34 specified in Section 65918.52 shall receive, upon request, an
35 equitable communities incentive as follows:

- 36 (1) Any eligible applicant shall receive the following:
 - 37 (A) A waiver from maximum controls on density.
 - 38 (B) A waiver from maximum automobile parking requirements
 - 39 greater than 0.5 automobile parking spots per unit.

1 (C) Up to three incentives and concessions pursuant to
2 subdivision (d) of Section 65915.

3 (2) An eligible applicant proposing a residential development
4 that is located within a one-half mile radius, but outside a
5 one-quarter mile radius, of a major transit stop and includes no
6 less than ____ percent affordable housing units shall receive, in
7 addition to the incentives specified in paragraph (1), waivers from
8 all of the following:

9 (A) Maximum height requirements less than 45 feet.

10 (B) Maximum FAR requirements less than 2.5.

11 (C) Notwithstanding subparagraph (B) of paragraph (1), any
12 maximum automobile parking requirement.

13 (3) An eligible applicant proposing a residential development
14 that is located within a one-quarter mile radius of a major transit
15 and includes no less than ____ percent affordable housing units
16 shall receive, in addition to the incentives specified in paragraph
17 (1), waivers from all of the following:

18 (A) Maximum height requirements less than 55 feet.

19 (B) Maximum FAR requirements less than 3.25.

20 (C) Notwithstanding subparagraph (B) of paragraph (1), any
21 maximum automobile parking requirement.

22 (4) Notwithstanding any other law, for purposes of calculating
23 any additional incentive or concession in accordance with Section
24 65915, the number of units in the residential development after
25 applying the equitable communities incentive received pursuant
26 to this chapter shall be used as the base density for calculating the
27 incentive or concession under that section.

28 (5) An eligible applicant proposing a project that meets all of
29 the requirements under Section 65913.4 may submit an application
30 for streamlined, ministerial approval in accordance with that
31 section.

32 (b) The local government may modify or expand the terms of
33 an equitable communities incentive provided pursuant to this
34 chapter, provided that the equitable communities incentive is
35 consistent with, and meets the minimum standards specified in,
36 this chapter.

37 65918.54. The Legislature finds and declares that this chapter
38 addresses a matter of statewide concern rather than a municipal
39 affair as that term is used in Section 5 of Article XI of the

1 California Constitution. Therefore, this chapter applies to all cities,
2 including charter cities.

3 65918.55. (a) It is the intent of the Legislature that
4 implementation of this chapter be delayed in sensitive communities
5 until July 1, 2020.

6 (b) It is further the intent of the Legislature to enact legislation
7 that does all of the following:

8 (1) Between January 1, 2020, and ____, allows a local
9 government, in lieu of the requirements of this chapter, to opt for
10 a community-led planning process aimed toward increasing
11 residential density and multifamily housing choices near transit
12 stops.

13 (2) Encourages sensitive communities to opt for a
14 community-led planning process at the neighborhood level to
15 develop zoning and other policies that encourage multifamily
16 housing development at a range of income levels to meet unmet
17 needs, protect vulnerable residents from displacement, and address
18 other locally identified priorities.

19 (3) Sets minimum performance standards for community plans,
20 such as minimum overall residential development capacity and
21 the minimum affordability standards set forth in this chapter.

22 (4) Automatically applies the provisions of this chapter on
23 January 1, 2025, to sensitive communities that do not have adopted
24 community plans that meet the minimum standards described in
25 paragraph (3), whether those plans were adopted prior to or after
26 enactment of this chapter.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 a local agency or school district has the authority to levy service
30 charges, fees, or assessments sufficient to pay for the program or
31 level of service mandated by this act, within the meaning of Section
32 17556 of the Government Code.



SB 50 – opposition to Senate Bill

Proposed by WRAC LUC on January 16, 2019

Passage deadline: March 2019

Not yet passed by a member Council

Motion

PROPOSED WRAC LUPC MOTION OPPOSING SB 50 DRAFT 4 [WIENER]

Whereas California neighborhoods **depend** upon high quality, citizen driven, local community planning for justice and equity and balanced development, and

Whereas State Senate Bill 50 [Scott Wiener] weaponizes state government code to eviscerate local planning statewide and thereby increases financialization of land use; intensifies inequality; encourages predatory speculative activity; and masks massive wealth transfer by shifting property ownership opportunities away from small owners to corporate investors, and

Whereas the City Charter-mandated Neighborhood Council system of Los Angeles, and the Community Councils of the City of Los Angeles, represent grass roots democracy, and

Whereas California State Senate Bill 50 [Scott Wiener] establishes “one size fits all” development criteria-based on changeable municipal structures such as bus stops and employment locations—to be determined, without democratic due process or public scrutiny, by the Department of Housing and Community Development and the Office of Planning and Research, and

Whereas the lack of analysis of infrastructure and other costs associated with this pen stroke planning creates grave uncertainty that any local agency would be able to *“levy enough service charges, fees or assessments sufficient to pay for the program or level of service mandated by this act within the meaning of Section 17556 of the Government Code”*; and given the aforementioned lack of fiscal analysis, Section 6 of Article XIII B of the California Constitution “No reimbursement” clause is wrongfully applied to this legislation,

Whereas reform is needed for the present state legislative system which allows sweeping, ideological blunt instrument legislation such as SB 50 to be introduced *without extensive vetting in local public hearings prior to consideration in the State Legislature, and*

Whereas this wholesale removal of all land use authority to the State clearly abolishes all meaningful local input into land use planning and therefore constitutes an attack upon local democracy, upon neighborhoods, and upon the Neighborhood Councils and Community Councils in the City of Los Angeles,

Therefore, _____ Neighborhood/Community Council opposes SB 50 and urges our City Councilmembers to introduce a resolution in Council forthwith, opposing SB50.

TALKING POINTS: SB 50 CHAPTER 4.35. Equitable Communities Incentives 65918.50:

Essentially the same fatal flaws as 827 with huge impacts upon local planning.

Reason to oppose now rather than wait until April: Important to register strong objections immediately in January/February as the bill's author has control of the State Senate Housing Committee which has been split off from Transportation.

Weaponizing of state code: FAR, or floor area ratio, is a city's basic tool to control height and bulk of buildings. Use is a city's basic tool to determine what goes in those buildings. Moving FAR and use to Sacramento guts local planning processes.

The density bonuses in this bill become the required base level, and stacking of bonuses is allowed

The bill forces cities to permit over the counter larger multi-family residential structures in "transit-rich" zones, regardless of limitations imposed by local community plans, specific plans, zoning restrictions or jurisdiction boundaries; it also forces cities to allow such structures near "jobs-rich projects," to be determined not on the local level but by State agencies in Sacramento. NCs and CCs would not get an opportunity to review or comment. This state control could be expanded without warning.

The potential for increased financialization of land use, and for predatory speculative activity, should be fairly obvious considering ongoing FBI investigations into LA's CC PLUM process as well as the rise of short-term rentals.

Porting land use decision making to Sacramento, where there is arguably less public scrutiny than local municipalities, is not a particularly good idea for open, transparent, responsive government.

California should be looking to increase ownership opportunities for communities of concern.

SB 50 seeks to impose community plan time limits raising this potential scenario: All Los Angeles' Community Plan updates might not be finished—and legally approved—in time. Moving thousands of projects to by-right status means no community benefits exchanged for these concessions as benefits are typically written into LA's plans. A community plan with community benefits imposed after the fact could well be tossed out in court. State law trumps local.

Bottom line: with the housing packages previously approved by the state legislature, there is no need for this bill.

NOTE: Gov. Newsom seeks to withhold gas tax revenues from cities which do not meet their RHNA goals. There exists some agreement that RHNA needs to be equitably applied, and that therefore RHNA is the more appropriate vehicle for legislative adjustments increasing housing production in California.

References to current provisions in the draft bill are in red:

- Ignores infrastructure by setting statewide, inflexible “minimum performance standards for community plans, such as minimum overall residential development capacity” without any CEQA analysis: **55 (b)(3)**
- Allows an “equitable communities incentive” *automatic* base of 5 concessions, including waivers from maximum density controls, for the new “Jobs-rich housing project” definition: **53 (a)(1)** and 6 concessions for Major Transit Stops **65918.53 (2) and (3)**
- Enables “bonus stacking” through connecting the existing concessions in state density bonus law [**SB 1818, now Section 65915**] which presently enables reductions relative to “...*site development standards; modification of zoning code requirements; architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission...including, but not limited to, a reduction in setback and square footage requirements*”, again without CEQA analysis **53 (a)(4)**
- Establishes a rigid statewide zoning code for FAR...*and use*: **53 (a) and (b)**
-
-
- Overrides ReCode’s tools for bulk and mass: **53**
- Essentially eliminates grass roots participation in the majority of local land use planning decisions by superimposing a new ‘as of right’ project definition, “Job-rich housing project”, which is based on fluctuating municipal conditions. Companies open and close and move, but high-density land use entitlements based on snapshots in time may be granted in perpetuity through this proposed law: **50 (f)**

- Raises significant due process issues as Department of Housing and Community Development and the Office of Planning and Research become the de facto state zoning board and board of appeals: **50(f) and (j)**

- The tenant occupancy time limits offer a false sense of security as the bill's more onerous provisions are merely postponed. Community rights to plan responsibly are overridden after the delay. Meanwhile, an incentive to speculative land banking exists as big capital investors can afford to offer cash for properties in the target areas, accumulate multiple single owner properties, evict tenants, and wait until after the 7-year delay to build. This process destroys the fabric of stable communities, siphons off affordable housing, and creates blight **52(d)**

- No pro forma requirement whatsoever



Download additional background

SENATE BILL 50 EQUITABLE COMMUNITIES INCENTIVE DEC 2018

Notes

WRAC is looking for input from member councils with respect to this motion, and SB50. Ammended motions ok.

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