SENATE COMMITTEE ON APPROPRIATIONS
Senator Anna Caballero, Chair
2025 - 2026 Regular Session

SB 79 (Wiener) - Local government land: public transit use: housing development: transit-oriented development

Version: May 13, 2025
Policy Vote: HOUSING 6 - 2, L. GOV. 4 - 3
Urgency: No
Mandate: Yes
Hearing Date: May 19, 2025
Consultant: Mark McKenzie

Bill Summary: SB 79 would (1) make certain transit-oriented development (TOD) projects an allowable use on specified sites, (2) exempt certain property supporting transit operations from the Surplus Land Act (SLA), and (3) exempt specified projects from the California Environmental Quality Act (CEQA).

Fiscal Impact:
- The Department of Housing and Community Development (HCD) estimates ongoing costs of approximately $369,000 for new workload to provide technical assistance to local agencies, developers, and other stakeholders, and to process case complaints of potential violations from developers, housing advocates, and legal organizations. Staff estimates that HCD could also incur additional costs, potentially in the low hundreds of thousands annually, to review specified ordinances and local TOD alternative plans, as specified. (General Fund)

- Unknown court cost pressures for workload to adjudicate additional cases filed as a result of the expansion of projects subject to provisions of the Housing Accountability Act (HAA) to include development projects within a specified distance from a TOD stop. Staff notes that, in addition to cases referred to the Attorney General by HCD to enforce violations of the HAA, eligible litigants include, project applicants, persons who would be eligible to reside in a proposed development, and specified housing organizations. (Special Fund – Trial Court Trust Fund, General Fund). See Staff Comments.

- Unknown local mandated costs. While the bill would impose new costs on local agencies to revise planning requirements and considerations for specified development projects within a specified distance of a TOD stop, these costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates. (local funds)

Background: Existing law, the Surplus Land Act, requires local agencies to compile an inventory of all lands under the agency's control that are in excess of its foreseeable needs at the end of each calendar year, and to include specified information related to surplus lands in annual progress reports to HCD. Existing law prescribes a process for disposing of surplus property that is no longer necessary for a local agency's use to certain entities for preferred purposes prior to offering the land on the open market. Existing law requires any local agency disposing of surplus land to first offer it for sale or

lease for the purpose of developing low- and moderate-income housing. Prior to disposing of surplus property, the local agency must send a written offer to sell or lease the property to specified entities, such as housing authorities, affordable housing developers, specified parks and recreation entities, school districts, and transportation entities, depending on the proposed use of the land. An interested agency must notify the disposing agency in writing of its intent to purchase the land within 60 days. An entity proposing to use the surplus land for development of low- and moderate-income housing must agree to designate at least 25% of the units as lower-income. Existing law designates certain types of land as "exempt surplus land" that may be disposed of without following the general requirements of the SLA. A local agency must take a formal action in a regular public meeting to declare that land is surplus, and not necessary for the agency's use, and to declare the land as either "surplus land" or "exempt surplus land," as supported by written findings, before the agency can take an action to dispose of the property.

Generally, for purposes of the SLA, "agency's use" cannot include commercial or industrial uses or activities, and land disposed of for the purpose of investment or generating revenue cannot be considered necessary for the agency's use. Consequently, cities and counties are limited in their ability to dispose of properties for economic development or revenue generation purposes. However, most special districts are not subject to those restrictions on agency's use as long as they can demonstrate that use of the site will (1) directly further the express purpose of agency work or operations, or (2) be expressly authorized by a statute governing the local agency. Transit districts can only dispose of property for commercial or revenue generation purposes if they meet specific requirements for developing affordable housing across their portfolio of properties, and have made a certain amount of progress towards building that housing.

Existing law, the Housing Accountability Act (HAA), limits the ability of local governments to disapprove or condition projects in a manner that renders them economically infeasible. Under the HAA a local government must approve a housing development project that is consistent with its objective general plan and zoning and subdivision standards, unless the project poses a risk to public health and safety that cannot be addressed without denying the project or reducing its size. The HAA explicitly prohibits a local agency from disapproving a housing project containing units affordable to very low-, low-, or moderate income renters, or conditioning the approval in a manner than renders the housing project infeasible, unless it makes one of a specified list of findings, based on substantial evidence in the record. The HAA also generally puts the burden of proof on the local agency to demonstrate that its decisions meet the HAA's requirements.

The HAA facilitates private enforcement of these provisions by allowing a project applicant, a person who would be eligible to reside in the proposed development, or a housing organization, as defined, to bring an action to enforce the HAA. If a court finds a local agency to be in violation of the HAA, it may issue an order or judgement compelling compliance with the HAA within 60 days. The HAA also allows a court, upon a determination that the locality has failed to comply with the order or judgment compelling compliance with the HAA within 60 days, to approve the housing development project, and impose fines on a local agency that has violated the HAA and to deposit any fine into a local housing trust fund or elect to deposit the fine in a state

account. The fine must be a minimum of $10,000 per unit, and additional fines may be imposed if the court finds that the locality acted in bad faith. Litigants supporting affordable housing projects can also recover their attorney's fees, with some limitations.

Under current law, cities and counties have the authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority. Specifically, they can enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, and lot coverage ratios to increase open space. Such ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific consideration. Zoning ordinances and other development decisions must be consistent with the city or county's general plan.

Local governments generally have broad authority to define the specific approval processes needed to satisfy these considerations. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review, including design review and appeals processes. Most housing projects that require discretionary review and approval are subject to California Environmental Quality Act (CEQA) review, while projects permitted ministerially are not.

In 2017, the Legislature enacted SB 35 (Wiener) to provide for a streamlined, ministerial process for approving housing developments that are in compliance with the applicable objective local planning standards—including the general plan, zoning ordinances, and objective design review standards. SB 35 sought to enable developments that face local opposition, but are consistent with local objective development standards, to be constructed. To be eligible for streamlining under the bill, a specified percentage of the total housing units in the development must be affordable to lower-income households.

In 2023, SB 423 (Wiener) extended AB 35's sunset until January 1, 2036, but also made many significant modifications to the original bill, including (1) authorizing SB 35 to apply within the coastal zone, beginning January 1, 2025, consistent with the applicable local coastal plan or land use plan, except in areas that are environmentally sensitive or hazardous, (2) requiring that, in jurisdictions not meeting their housing targets for above moderate-households, projects eligible for SB 35 streamlining must contain at least 10 percent of the units affordable to very low-income households (i.e., 50 percent of the area median income (AMI) or below), and (3) amending labor standards that apply to projects over 85 feet in height above grade.

Under current law, the California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect

on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA, until January 1, 2030, exempts from its requirements certain transportation-related projects if specified requirements are met, as provided. CEQA includes within these exempt transportation-related projects a public project for the institution or increase of bus rapid transit, bus, or light rail service, or other passenger rail service, that will be exclusively used by low-emission or zero-emission vehicles, on existing public rights-of-way or existing highway rights-of-way.

California has the largest concentration of severely unaffordable housing markets in the nation, with the average home value in California at $789,000, compared to $362,000 nationally. To keep up with demand, the Department of Housing and Community Development (HCD) estimates that the State must plan for the development of more than 2.5 million homes over the next eight years, and no less than one million of those homes must meet the needs of lower-income households (more than 640,000 very-low income and 385,000 low-income units are needed). Insufficient housing has been constructed to meet demand for decades, resulting in a severe undersupply of housing.

HCD data indicate that completed residential construction rose 13 percent in 2023, to 112,076 units. Construction has risen every year since 2018. Additionally, the share of lower-income units in new development has nearly doubled since 2018, comprising 19 percent of permitted units and 16 percent of completed units in 2023. Overall, housing production increased by 62 percent in 2023.

Proposed Law: This bill, among other things, would do the following:

- Expand the definition of "agency's use," for purposes of the SLA, to include land leased to support public transit operations, so that these lands are not subject to the requirements of the SLA.

- Specify that "agency use," in the case of a transit operator, may include commercial or industrial uses or activities, as specified, if the agency's governing body acts to declare in a public meeting that the use of the site will: (1) directly further the express purpose of agency work or operations; or (2) be expressly authorized by a statute governing the local agency, as specified.

- Require that a housing development project, as defined, proposed within a specified distance of a transit-oriented development (TOD) stop, as defined, be an allowed use on any site zoned for residential, mixed, or commercial development, or a qualified light industrial site, as defined, if the development complies with applicable requirements, as specified.

- Establish eligibility for certain development standards, including height limits, density, and floor area ratio in accordance with a development's proximity to specified tiers of TOD stops, as provided.

- Provide that, for the purposes of the HAA, a proposed development consistent with the applicable standards of the bill would be deemed consistent, compliant, and in conformity with prescribed requirements, as specified.

- Specify that a local jurisdiction that denies a project meeting the requirements of these provisions and located in a high-resource area, as defined, would be presumed in violation of the HAA, as specified, and immediately liable for penalties, as provided.

- Specify that a development proposed pursuant to these provisions is eligible for streamlined, ministerial approval, except as specified, and would require the project to comply with certain affordability requirements.

- Require a proposed development to comply with specified requirements under existing law relating to the demolition of existing residential units and to include housing for lower income households, as specified.

- Authorize a transit agency to adopt objective standards for both residential and commercial development proposed, as specified, if the development would be constructed on land owned by the transit agency or on which the transit agency has a permanent operating easement, if the land is within half a mile of a TOD stop and the objective standards allow for the same or greater development intensity as allowed by local standards or applicable state law.

- Authorize a local government to enact a local TOD alternative plan as an amendment to the housing element and land use element, and exempt a local government that has enacted a local TOD alternative plan from the above-specified provisions. The TOD alternative plan must maintain at least the same total increase in feasible zoned capacity, in terms of both total units and residential floor area, across all TOD zones, as defined. A local jurisdiction must, except as provided, submit the draft plan to HCD, and HCD must review the plan and recommend changes to remove unnecessary constraints on housing.

- Require HCD to oversee compliance with the bill's provisions, including, but not limited to, promulgating specified standards relating to the inventory of land included within a county's or city's housing element.

- Authorize the regional council of governments or metropolitan planning organization to create a map of designated TOD stops and zones, which would have a rebuttable presumption of validity.

- Authorize a local government to enact an ordinance to make its zoning code consistent with its provisions.

- Require the local government to submit a copy of this ordinance to HCD within 60 days of enactment and require HCD to review the ordinance for compliance, as specified. If HCD finds an ordinance is out of compliance, and the local government does not take specified steps to address compliance, the bill would require HCD to notify the local government in writing and authorize the department to notify the Attorney General, as provided.

- Exempt from CEQA a public or private residential, commercial, or mixed-used project that, at the time the project application is filed, is located entirely or principally

on land owned by a public transit agency, or fully or partially encumbered by an existing operating easement in favor of a public transit agency, and meets specified requirements.

- Provide that, for a project that requires the construction of new passenger rail storage and maintenance facilities at a publicly or privately owned offsite location distinct from the principal project site, that project would be considered a wholly separate project from the project described in these provisions and shall not be exempt from CEQA.

Related Legislation: SB 423 (Wiener), Chap. 778/2023, expanded the applicability of a streamlined, ministerial approval process for certain infill, multifamily, mixed-income housing projects that are proposed in local jurisdictions that have not met regional housing needs if the projects meet specific affordability and labor criteria.

SB 50 (Wiener), which failed passage on the Senate Floor in 2020, would have required a local government to grant an equitable communities incentive, which reduces specified local zoning standards in "jobs-rich" and "transit rich areas," as defined, when a development proponent meets specified requirements.

Staff Comments: The specific number of new actions that would be filed under the bill is unknown. Staff notes that it generally costs about $10,500 to operate a courtroom for one eight-hour day. If civil cases brought as a result of this bill take an additional 40 hours of court time in the aggregate in a given year, the cost pressures to the courts would surpass the Suspense File threshold. Although courts are not funded on the basis of workload, increased staff time and resources may create a need for additional support from the General Fund to support court operations. The 2025-26 Budget includes $40 million in ongoing support from the General Fund costs to backfill the fund imbalance in the Trial Court Trust Fund and help pay for trial court operations. The May Revision includes total funding of $5.2 billion ($3.2 billion General Fund) in 2025-26 for the Judicial Branch, of which $2.9 billion is provided to support trial court operations.

The bill's mandated local costs would not be subject to state reimbursement because local agencies have the authority to charge and adjust planning and permitting fees as necessary to cover administrative costs. Existing law authorizes planning and zoning fees to "include the costs reasonably necessary to prepare and revise the plans and policies that a local agency is required to adopt before it can make any necessary findings and determinations." Case law and previous decisions by the Commission on State Mandates support the position that local governments' planning costs are not reimbursable when the state imposes new planning mandates.

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