Beverly Hills City Council Liaison / Legislative/Lobby Committee will conduct a Special Meeting, at the following time and place, and will address the agenda listed below:

Video Teleconference
Call in: (916) 235-1420 or (888) 468-1195
Participant Pin: 872120
Beverly Hills City Hall
Beverly Hills, CA 90210

July 10, 2020
3:30 PM

TELEPHONIC/VIDEO CONFERENCE MEETING

Pursuant to Executive Order N-25-20 members of the Beverly Hills City Council and staff may participate in this meeting via a teleconference. In the interest of maintaining appropriate social distancing, members of the public can participate by listening to the Special Meeting at (916) 235-1420 or (888) 468-1195 (participant code 872120) and offer comment through email at mayorandcitycouncil@beverlyhills.org

AGENDA

A. Oral Communications

1. Public Comment

Members of the public will be given the opportunity to directly address the Committee on any item listed on the agenda.

B. Direction

1. H.R. 2513 – The Corporate Transparency Act of 2019

Comment: This item seeks direction on H.R. 2513, which would require certain new and existing small corporations and limited liability companies to disclose information about their beneficial owners.

2. H.R.7120 - George Floyd Law Justice in Policing Act of 2020

Comment: This item seeks direction on H.R. 7120, which would develop uniform standards for law enforcement organizations including but not limited to banning chokeholds, enforcing national transparency standards, prohibiting no knock warrants, and establishing accountability for officer misconduct with a national database to track offenses.

3. AB 1022 (Holden) - Peace Officers: Use of Force

Comment: This item seeks direction on AB 1022. Current law requires law enforcement policy, among other things, to require that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be unnecessary, and to require that officers intercede when present and observing another officer using force that is clearly beyond that which is necessary, as specified. This bill would require those law enforcement policies to require those officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force.
4. AB 1196 (Gipson) – Peace Officers: Use of Force

Comment: This item seeks direction on AB 1196, which would prohibit a law enforcement agency from authorizing the use of a carotid restraint or a choke hold.

5. AB 1436 (Chiu) - Tenancy: Rental Payment Default: State of Emergency: COVID-19

Comment: This item seeks direction on AB 1436, which would prohibit a landlord from applying a security deposit or monthly rental payment for the satisfaction of an obligation other than the prospective month’s rent if the obligation accrued during or within 90 days after the termination of a state of emergency related to COVID-19, except as specified. The bill would provide that a tenant who failed to pay rent that accrued during that period shall not be deemed to be in default and would prohibit any action for recovery of unpaid rent until 15 months after the state of emergency is terminated.

6. AB 1506 (McCarty, Weber, Bradford) – Police Use of Force

Comment: This item seeks direction on AB 1506, which would create a division within the Department of Justice to, upon the request of a law enforcement agency, review the use-of-force policy of the agency and make recommendations.

7. SB 902 (Wiener) - Planning and Zoning: Housing Development: Density

Comment: This item seeks direction on SB 902 would authorize a local government to pass an ordinance, notwithstanding any local restrictions on adopting zoning ordinances, to zone any parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site, as those terms are defined.

8. SB 995 (Atkins) - Environmental Quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2011: Housing Projects

Comment: This item seeks direction on SB 995, which would require a lead agency to prepare a master EIR for a general plan, plan amendment, plan element, or specified plan for housing projects where the state has provided funding for the preparation of the master EIR.

9. SB 1079 (Skinner) - Residential Property: Foreclosure

Comment: This item seeks direction on SB 1079, which would require a trustee of a house being sold, during the 20-day period before the date of sale, to receive offers from individuals who would be owner-occupants of the home and from a public entity that is utilizing public funds to purchase the property and would require any offer from a prospective owner-occupant to be accompanied by an owner-occupant certification. The bill would define the terms “owner-occupants” and “public entity” for purposes of these provisions.

10. SB 1085 (Skinner) - Density Bonus Law: Qualifications for Incentives or Concessions: Student Housing for Lower Income Students: Moderate-Income Persons and Families: Local Government Constraints

Comment: This item seeks direction on SB 1085, which would require a unit designated to satisfy the inclusionary zoning requirements of a city or county to be included in the total number of units on which a density bonus and the number of incentives or concessions are based.
11. SB 1120 (Atkins) - Subdivisions: Tentative Maps

Comment: This item seeks direction on SB 1120, which would, among other things, require a proposed housing development containing two residential units to be considered ministerially, without discretionary review or hearing, in zones where allowable uses are limited to single-family residential development if the proposed housing development meets certain requirements.

12. SB 1385 (Caballero) - Local Planning: Housing: Commercial Zones

Comments: This item seeks direction on SB 1385, which would deem a housing development project, as defined, an allowable use on a neighborhood lot that is zoned for office or retail commercial use under a local agency’s zoning code or general plan.

13. SB 1410 (Caballero) - COVID-19 Emergency: Tenancies

Comment: This item seeks direction on SB 1410, which would authorize an owner of real property and a tenant to sign and execute a tenant-owner COVID-19 eviction relief agreement that would allow the tenant to defer the tenant’s unpaid rent, and would prohibit the owner from serving a notice terminating the tenancy or filing a complaint for unlawful detainer for that unpaid rent or during the state of emergency, unless an exception applies.

14. State and Federal Legislative Updates

Comment: The City’s state and federal lobbyists will provide a verbal update to the Liaisons on state and federal issues.

C. Adjournment

George Chavez
City Manager

Posted: July 7, 2020

A DETAILED LIAISON AGENDA PACKET IS AVAILABLE FOR REVIEW AT WWW.BEVERLYHILLS.ORG

Pursuant to the Americans with Disabilities Act, the City of Beverly Hills will make reasonable efforts to accommodate persons with disabilities. If you require special assistance, please call (310) 285-1014 (voice) or (310) 285-6881 (TTY). Providing at least forty-eight (48) hours advance notice will help to ensure availability of services. City Hall, including Conference Room 4A, is wheelchair accessible.
Item B-1
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

H.R. 2513 – The Corporate Transparency Act of 2019 (H.R. 2513) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s federal lobbyist, David Turch & Associates, provided a summary memo for H.R. 2513 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of H.R. 2513, the Liaisons may recommend the following actions:

1) Support H.R. 2513;
2) Support if amended H.R. 2513;
3) Oppose H.R. 2513;
4) Oppose unless amended H.R. 2513;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on H.R. 2513, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
The U.S. House of Representatives passed H.R. 2513, the Corporate Transparency Act of 2019, by a vote of 249-173 on October 22, 2019. Only 25 House Republicans voted for the bill. The legislation, sponsored by Representatives Carolyn Maloney (D-NY), Peter King (R-NY) and Tom Malinowski (D-NJ), has been referred to the Senate Banking, Housing and Urban Affairs Committee. A companion bill, S.1978, has been introduced by Senator Ron Wyden (D-OR). The Senate Banking Committee has taken no action on H.R. 2513/S.1978 to date.

The Corporate Transparency Act would require corporations and limited liability companies in the United States to disclose their beneficial owners, a measure that the bill’s supporters argue will help prevent malign actors from leveraging anonymity to exploit these entities for criminal gain.

According to the bill sponsors, there currently are no state or federal laws that require small businesses to provide the identities of the company’s true, beneficial owners. This makes it very easy for criminals and other bad actors to manipulate the system and launder or hide money via anonymous shell companies. According to the U.S. Small Business Administration, approximately 78 percent of all businesses in the U.S. are non-employer firms, meaning there is only one person in the enterprise.

The Corporate Transparency Act closes this loophole by:

- Requiring corporations and limited liability companies to disclose their true, beneficial owners to the Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) at the time the company is formed.
  - Companies with over 20 employees and over $5mm in gross receipts or sales, and which have a physical presence in the U.S., are also exempt from the bill’s requirements, because companies that employ this many people and that have legitimate, business-related income are very unlikely to be anonymous shell companies that were created to hide or launder illicit funds.
- Establishes minimum beneficial ownership disclosure requirements such as the beneficial owners’ name, date of birth, current address, and driver’s license or non-expired passport number.
  - No financial information or details about business purpose or operation is required.
• Requires companies to file annually with FinCEN a list of its current beneficial owners, as well as a list of any changes in beneficial ownership that occurred during the previous year.
• Provides civil (up to $10,000 fines) and criminal penalties (up to three years in jail) for persons who willfully submit false or fraudulent beneficial ownership information, or who knowingly fail to provide complete or updated beneficial ownership information.
• Beneficial ownership information collected by Treasury or the states will only be available to: (1) law enforcement; and (2) financial institutions, with customer consent, for purposes of complying with their “Know Your Customer” requirements under Anti-Money Laundering law.
• According to supporters of the bill, it is narrowly tailored so as not to be overly burdensome to either businesses or the states themselves — the bill targets companies that are more likely to be shell companies.
• Financial institutions and non-profits are required to disclose their beneficial owners, such as federally regulated banks, credit unions, investment advisers, broker-dealers, state-regulated insurance companies, churches, and charitable organizations. As such, these companies are exempt from the bill’s requirements.

**SUPPORT:**
National security experts, police, sheriffs, local prosecutors, state Attorneys General, federal prosecutors, human rights advocates, anti-human trafficking groups, faith-based networks, international development NGOs, several CEOs and businesses, banks, credit unions, real estate professionals, insurance companies, over 125 non-governmental organizations, and scholars at both conservative and liberal think tanks, among others.

**State Attorneys General:** California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, New Mexico, North Carolina, Northern Mariana Islands, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, and Washington.

**Law Enforcement Organizations Include:** Alabama State Lodge of the Fraternal Order of Police, Arizona Fraternal Order of Police, ATF Association, Federal Law Enforcement Officers Association (FLEOA), Dennis Lormel, former Chief of the FBI Financial Crimes and Terrorist Financing Operations Sections, Donald C. Semesky Jr., Former Chief of Financial Operations, Drug Enforcement Administration, Georgia Fraternal Order of Police, National Association of Assistant United States Attorneys (NAAUSA), National District Attorneys Association (NDAA), National Fraternal Order of Police (FOP), National Narcotic Officers’ Associations Coalition (NNOAC), Society of Former Special Agents of the FBI and the U.S. Marshals Service Association

**Human Rights Organizations:** Amnesty International USA, Freedom House, Human Rights Watch, International Corporate Accountability Roundtable, Center for Constitutional Rights, Business and Human Rights, National Association for the Advancement of Colored People (NAACP), International Rights Advocate

**International Development Organizations:** ActionAid USA, Bread for the World, ONE Campaign, Oxfam America
**OPPOSE:**

The small business community argues that the bill would impose burdensome, duplicative reporting burdens on millions of small businesses in the United States and threatens the privacy of law-abiding, legitimate small business owners.

- The National Federation of Independent Business (NFIB), the leading small business association in Washington, DC, released a study that found under the *Corporate Transparency Act of 2019*, small businesses would face $5.7 billion in new regulatory costs and an additional 131.7 million hours of paperwork.

- The legislation attempts to shift the reporting requirements from large banks – those best equipped to handle reporting requirements – to millions of small businesses – those least equipped to handle reporting requirements.

- The Congressional Budget Office found that “Because of the high volume of businesses that must meet the new reporting requirements and the additional administrative burden to file a new report, CBO estimates that the total costs to comply with the mandate would be substantial,” generating between 25 million to 30 million new reports annually.

- The bill raises significant privacy and cybersecurity concerns as the proposed FinCEN “beneficial ownership” database would contain the names, dates of birth, addresses and unexpired drivers’ license numbers or passport numbers of millions of small business owners. This database would be accessible to local and foreign law enforcement agencies and could be hacked.

**Organization that Oppose the Bill:** National Federation of Independent Businesses; National Association of Home Builders; National Association of Wholesaler-Distributors; National Grocers Association; National Restaurant Association; American Hotel and Lodging Association; Associated Builders and Contractors; International Franchise Association; the Real Estate Roundtable; S-Corporation Association and the Small Business & Entrepreneurship Council.

**OUTLOOK:**

In light of the strong opposition by small business associations and the majority of congressional Republicans, the bill is unlikely to move through the Republican-controlled Senate Banking, Housing and Urban Affairs Committee or be scheduled for a floor vote by Senate Majority Leader Mitch McConnell before the year.
Attachment 2
H. R. 2513

IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 2019

Received, read twice and referred to the Committee on Banking, Housing, and Urban Affairs

AN ACT

To ensure that persons who form corporations or limited liability companies in the United States disclose the beneficial owners of those corporations or limited liability companies, in order to prevent wrongdoers from exploiting United States corporations and limited liability companies for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations and limited liability companies, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

DIVISION A—CORPORATE
TRANSPARENCY ACT OF 2019

SECTION 1. SHORT TITLE.

(a) In General.—This Act may be cited as the
“Corporate Transparency Act of 2019”.

(b) References to This Act.—In this division—

(1) any reference to “this Act” shall be deemed
a reference to “this division”; and

(2) except as otherwise expressly provided, any
reference to a section or other provision shall be
deemed a reference to that section or other provision
of this division.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Nearly 2,000,000 corporations and limited
liability companies are being formed under the laws
of the States each year.

(2) Very few States require information about
the beneficial owners of the corporations and limited
liability companies formed under their laws.

(3) A person forming a corporation or limited
liability company within the United States typically
provides less information at the time of incorpora-
tion than is needed to obtain a bank account or driver’s license and typically does not name a single beneficial owner.

(4) Criminals have exploited State formation procedures to conceal their identities when forming corporations or limited liability companies in the United States, and have then used the newly created entities to commit crimes affecting interstate and international commerce such as terrorism, proliferation financing, drug and human trafficking, money laundering, tax evasion, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption.

(5) Law enforcement efforts to investigate corporations and limited liability companies suspected of committing crimes have been impeded by the lack of available beneficial ownership information, as documented in reports and testimony by officials from the Department of Justice, the Department of Homeland Security, the Department of the Treasury, and the Government Accountability Office, and others.

(6) In July 2006, the leading international antимoney laundering standard-setting body, the Financial Action Task Force on Money Laundering (in
this section referred to as the "FATF"), of which
the United States is a member, issued a report that
criticizes the United States for failing to comply
with a FATF standard on the need to collect bene-
ificial ownership information and urged the United
States to correct this deficiency by July 2008. In
December 2016, FATF issued another evaluation of
the United States, which found that little progress
has been made over the last ten years to address
this problem. It identified the "lack of timely access
to adequate, accurate and current beneficial owner-
ship information" as a fundamental gap in United
States efforts to combat money laundering and ter-
rorist finance.

(7) In response to the 2006 FATF report, the
United States has urged the States to obtain bene-
ficial ownership information for the corporations and
limited liability companies formed under the laws of
such States.

(8) In contrast to practices in the United
States, all 28 countries in the European Union are
required to have corporate registries that include
beneficial ownership information.

(9) To reduce the vulnerability of the United
States to wrongdoing by United States corporations
and limited liability companies with hidden owners, to protect interstate and international commerce from criminals misusing United States corporations and limited liability companies, to strengthen law enforcement investigations of suspect corporations and limited liability companies, to set a clear, universal standard for State incorporation practices, and to bring the United States into compliance with international anti-money laundering standards, Federal legislation is needed to require the collection of beneficial ownership information for the corporations and limited liability companies formed under the laws of such States.

SEC. 3. TRANSPARENT INCORPORATION PRACTICES.

(a) IN GENERAL.—

(1) Amendment to the Bank Secrecy Act.—Chapter 53 of title 31, United States Code, is amended by inserting after section 5332 the following new section:

“§ 5333 Transparent incorporation practices

“(a) Reporting Requirements.—

“(1) Beneficial ownership reporting.—

“(A) In general.—Each applicant to form a corporation or limited liability company under the laws of a State or Indian Tribe shall
file a report with FinCEN containing a list of
the beneficial owners of the corporation or lim-
ited liability company that—

“(i) except as provided in paragraphs
(3) and (4), and subject to paragraph (2),
identifies each beneficial owner by—

“(I) full legal name;
“(II) date of birth;
“(III) current residential or busi-
ness street address; and

“(IV) a unique identifying num-
ber from a non-expired passport
issued by the United States, a non-ex-
pired personal identification card, or a
non-expired driver’s license issued by
a State; and

“(ii) if the applicant is not a bene-
ficial owner, also provides the identification
information described in clause (i) relating
to such applicant.

“(B) UPDATED INFORMATION.—Each cor-
poration or limited liability company formed
under the laws of a State or Indian Tribe
shall—
“(i) submit to FinCEN an annual filing containing a list of—

“(I) the current beneficial owners of the corporation or limited liability company and the information described in subparagraph (A) for each such beneficial owner; and

“(II) any changes in the beneficial owners of the corporation or limited liability company during the previous year; and

“(ii) pursuant to any rule issued by the Secretary of the Treasury under subparagraph (C), update the list of the beneficial owners of the corporation or limited liability company within the time period prescribed by such rule.

“(C) Rulemaking on Updating Information.—Not later than 9 months after the completion of the study required under section 4(a)(1) of the Corporate Transparency Act of 2019, the Secretary of the Treasury shall consider the findings of such study and, if the Secretary determines it to be necessary or appropriate, issue a rule requiring corporations and
limited liability companies to update the list of
the beneficial owners of the corporation or lim-
ited liability company within a specified amount
of time after the date of any change in the list
of beneficial owners or the information required
to be provided relating to each beneficial owner.

“(D) STATE NOTIFICATION.—Each State
in which a corporation or limited liability com-
pany is being formed shall notify each applicant
of the requirements listed in subparagraphs (A)
and (B).

“(2) CERTAIN BENEFICIAL OWNERS.—If an ap-
plicant to form a corporation or limited liability com-
pany or a beneficial owner, or similar agent of a cor-
poration or limited liability company who is required
to provide identification information under this sub-
section, does not have a nonexpired passport issued
by the United States, a nonexpired personal identifi-
cation card, or a non-expired driver’s license issued
by a State, each such person shall provide to
FinCEN the full legal name, current residential or
business street address, a unique identifying number
from a non-expired passport issued by a foreign gov-
ernment, and a legible and credible copy of the
pages of a non-expired passport issued by the gov-
ernment of a foreign country bearing a photograph, date of birth, and unique identifying information for each beneficial owner, and each application described in paragraph (1)(A) and each update described in paragraph (1)(B) shall include a written certification by a person residing in the State or Indian country under the jurisdiction of the Indian Tribe forming the entity that the applicant, corporation, or limited liability company—

“(A) has obtained for each such beneficial owner, a current residential or business street address and a legible and credible copy of the pages of a non-expired passport issued by the government of a foreign country bearing a photograph, date of birth, and unique identifying information for the person;

“(B) has verified the full legal name, address, and identity of each such person;

“(C) will provide the information described in subparagraph (A) and the proof of verification described in subparagraph (B) upon request of FinCEN; and

“(D) will retain the information and proof of verification under this paragraph until the end of the 5-year period beginning on the date
that the corporation or limited liability company terminates under the laws of the State or Indian Tribe.

“(3) EXEMPT ENTITIES.—

“(A) IN GENERAL.—With respect to an applicant to form a corporation or limited liability company under the laws of a State or Indian Tribe, if such entity is described in subparagraph (C) or (D) of subsection (d)(4) and will be exempt from the beneficial ownership disclosure requirements under this subsection, such applicant, or a prospective officer, director, or similar agent of the applicant, shall file a written certification with FinCEN—

“(i) identifying the specific provision of subsection (d)(4) under which the entity proposed to be formed would be exempt from the beneficial ownership disclosure requirements under paragraphs (1) and (2);

“(ii) stating that the entity proposed to be formed meets the requirements for an entity described under such provision of subsection (d)(4); and

“(iii) providing identification information for the applicant or prospective offi-
cer, director, or similar agent making the
certification in the same manner as pro-
vided under paragraph (1) or (2).

"(B) EXISTING CORPORATIONS OR LIM-
ITED LIABILITY COMPANIES.—On and after the
date that is 2 years after the final regulations
are issued to carry out this section, a corpora-
tion or limited liability company formed under
the laws of the State or Indian Tribe before
such date shall be subject to the requirements
of this subsection unless an officer, director, or
similar agent of the entity submits to FinCEN
a written certification—

"(i) identifying the specific provision
of subsection (d)(4) under which the entity
is exempt from the requirements under
paragraphs (1) and (2);

"(ii) stating that the entity meets the
requirements for an entity described under
such provision of subsection (d)(4); and

"(iii) providing identification informa-
tion for the officer, director, or similar
agent making the certification in the same
manner as provided under paragraph (1)
or (2).
“(C) Exempt entities having ownership interest.—If an entity described in subparagraph (C) or (D) of subsection (d)(4) has or will have an ownership interest in a corporation or limited liability company formed or to be formed under the laws of a State or Indian Tribe, the applicant, corporation, or limited liability company in which the entity has or will have the ownership interest shall provide the information required under this subsection relating to the entity, except that the entity shall not be required to provide information regarding any natural person who has an ownership interest in, exercises substantial control over, or receives substantial economic benefits from the entity.

“(4) FinCEN ID Numbers.—

“(A) Issuance of FinCEN ID number.—

“(i) In general.—FinCEN shall issue a FinCEN ID number to any individual who requests such a number and provides FinCEN with the information described under subclauses (I) through (IV) of paragraph (1)(A)(i).
“(ii) Updating of Information.—
An individual with a FinCEN ID number shall submit an annual filing with FinCEN updating any information described under subclauses (I) through (IV) of paragraph (1)(A)(i).

“(B) Use of FinCEN ID Number in Reporting Requirements.—Any person required to report the information described under paragraph (1)(A)(i) with respect to an individual may instead report the FinCEN ID number of the individual.

“(C) Treatment of Information Submitted for FinCEN ID Number.—For purposes of this section, any information submitted under subparagraph (A) shall be deemed to be beneficial ownership information.

“(5) Retention and Disclosure of Beneficial Ownership Information by FinCEN.—

“(A) Retention of Information.—Beneficial ownership information relating to each corporation or limited liability company formed under the laws of the State or Indian Tribe shall be maintained by FinCEN until the end of the 5-year period (or such other period of time...
as the Secretary of the Treasury may, by rule, determine) beginning on the date that the corporation or limited liability company terminates.

"(B) DISCLOSURE OF INFORMATION.—Beneficial ownership information reported to FinCEN pursuant to this section shall be provided by FinCEN only upon receipt of—

"(i) subject to subparagraph (C), a request, through appropriate protocols, by a local, Tribal, State, or Federal law enforcement agency;

"(ii) a request made by a Federal agency on behalf of a law enforcement agency of another country under an international treaty, agreement, or convention, or an order under section 3512 of title 18 or section 1782 of title 28; or

"(iii) a request made by a financial institution, with customer consent, as part of the institution’s compliance with due diligence requirements imposed under the Bank Secrecy Act, the USA PATRIOT Act, or other applicable Federal, State, or Tribal law.
“(C) APPROPRIATE PROTOCOLS.—

“(i) PRIVACY.—The protocols described in subparagraph (B)(i) shall—

“(I) protect the privacy of any beneficial ownership information provided by FinCEN to a local, Tribal, State, or Federal law enforcement agency;

“(II) ensure that a local, Tribal, State, or Federal law enforcement agency requesting beneficial ownership information has an existing investigatory basis for requesting such information;

“(III) ensure that access to beneficial ownership information is limited to authorized users at a local, Tribal, State, or Federal law enforcement agency who have undergone appropriate training, and refresher training no less than every two years, and that the identity of such authorized users is verified through appropriate mechanisms, such as two-factor authentication;
“(IV) include an audit trail of requests for beneficial ownership information by a local, Tribal, State, or Federal law enforcement agency, including, as necessary, information concerning queries made by authorized users at a local, Tribal, State, or Federal law enforcement agency;

“(V) require that every local, Tribal, State, or Federal law enforcement agency that receives beneficial ownership information from FinCEN conducts an annual audit to verify that the beneficial ownership information received from FinCEN has been accessed and used appropriately, and consistent with this paragraph; and

“(VI) require FinCEN to conduct an annual audit of every local, Tribal, State, or Federal law enforcement agency that has received beneficial ownership information to ensure that such agency has requested beneficial ownership information, and has used any beneficial ownership infor-
mation received from FinCEN, appropriately, and consistent with this paragraph.

"(ii) LIMITATION ON USE.—Beneficial ownership information provided to a local, Tribal, State, or Federal law enforcement agency under this paragraph may only be used for law enforcement, national security, or intelligence purposes.

"(D) ACCESS PROCEDURES.—FinCEN shall establish stringent procedures for the protection and proper use of beneficial ownership information disclosed pursuant to subparagraph (B), including procedures to ensure such information is not being inappropriately accessed or misused by law enforcement agencies.

"(E) REPORT TO CONGRESS.—FinCEN shall issue an annual report to Congress stating—

"(i) the number of times law enforcement agencies and financial institutions have accessed beneficial ownership information pursuant to subparagraph (B);

"(ii) the number of times beneficial ownership information reported to
FinCEN pursuant to this section was inappropriately accessed, and by whom; and

“(iii) the number of times beneficial ownership information was disclosed under subparagraph (B) pursuant to a subpoena.

“(F) DISCLOSURE OF NON-PII DATA.— Notwithstanding subparagraph (B), FinCEN may issue guidance and otherwise make materials available to financial institutions and the public using beneficial ownership information reported pursuant to this section if such information is aggregated in a manner that removes all personally identifiable information. For purposes of this subparagraph, ‘personally identifiable information’ includes information that would allow for the identification of a particular corporation or limited liability company.

“(b) NO BEARER SHARE CORPORATIONS OR LIMITED LIABILITY COMPANIES.—A corporation or limited liability company formed under the laws of a State or Indian Tribe may not issue a certificate in bearer form evidencing either a whole or fractional interest in the corporation or limited liability company.

“(c) PENALTIES.—
“(1) IN GENERAL.—It shall be unlawful for any person to affect interstate or foreign commerce by—

“(A) knowingly providing, or attempting to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph, to FinCEN in accordance with this section;

“(B) willfully failing to provide complete or updated beneficial ownership information to FinCEN in accordance with this section; or

“(C) knowingly disclosing the existence of a subpoena or other request for beneficial ownership information reported pursuant to this section, except—

“(i) to the extent necessary to fulfill the authorized request; or

“(ii) as authorized by the entity that issued the subpoena, or other request.

“(2) CIVIL AND CRIMINAL PENALTIES.—Any person who violates paragraph (1)—

“(A) shall be liable to the United States for a civil penalty of not more than $10,000; and
“(B) may be fined under title 18, United States Code, imprisoned for not more than 3 years, or both.

“(3) LIMITATION.—Any person who negligently violates paragraph (1) shall not be subject to civil or criminal penalties under paragraph (2).

“(4) WAIVER.—The Secretary of the Treasury may waive the penalty for violating paragraph (1) if the Secretary determines that the violation was due to reasonable cause and was not due to willful neglect.

“(5) CRIMINAL PENALTY FOR THE MISUSE OR UNAUTHORIZED DISCLOSURE OF BENEFICIAL OWNERSHIP INFORMATION.—The criminal penalties provided for under section 5322 shall apply to a violation of this section to the same extent as such criminal penalties apply to a violation described in section 5322, if the violation of this section consists of the misuse or unauthorized disclosure of beneficial ownership information.

“(d) DEFINITIONS.—For the purposes of this section:

“(1) APPLICANT.—The term ‘applicant’ means any natural person who files an application to form a corporation or limited liability company under the laws of a State or Indian Tribe.


“(2) BANK SECRECY ACT.—The term ‘Bank Secrecy Act’ means—

“(A) section 21 of the Federal Deposit Insurance Act;

“(B) chapter 2 of title I of Public Law 91–508; and

“(C) this subchapter.

“(3) BENEFICIAL OWNER.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘beneficial owner’ means a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

“(i) exercises substantial control over a corporation or limited liability company;

“(ii) owns 25 percent or more of the equity interests of a corporation or limited liability company; or

“(iii) receives substantial economic benefits from the assets of a corporation or limited liability company.

“(B) EXCEPTIONS.—The term ‘beneficial owner’ shall not include—
“(i) a minor child, as defined in the State or Indian Tribe in which the entity is formed;

“(ii) a person acting as a nominee, intermediary, custodian, or agent on behalf of another person;

“(iii) a person acting solely as an employee of a corporation or limited liability company and whose control over or economic benefits from the corporation or limited liability company derives solely from the employment status of the person;

“(iv) a person whose only interest in a corporation or limited liability company is through a right of inheritance; or

“(v) a creditor of a corporation or limited liability company, unless the creditor also meets the requirements of subparagraph (A).

“(C) SUBSTANTIAL ECONOMIC BENEFITS DEFINED.—

“(i) IN GENERAL.—For purposes of subparagraph (A)(ii), a natural person receives substantial economic benefits from the assets of a corporation or limited liabil-
ity company if the person has an entitlement to more than a specified percentage of the funds or assets of the corporation or limited liability company, which the Secretary of the Treasury shall, by rule, establish.

"(ii) Rulemaking Criteria.—In establishing the percentage under clause (i), the Secretary of the Treasury shall seek to—

"(I) provide clarity to corporations and limited liability companies with respect to the identification and disclosure of a natural person who receives substantial economic benefits from the assets of a corporation or limited liability company; and

"(II) identify those natural persons who, as a result of the substantial economic benefits they receive from the assets of a corporation or limited liability company, exercise a dominant influence over such corporation or limited liability company.
“(4) Corporation; limited liability company.—The terms ‘corporation’ and ‘limited liability company’—

“(A) have the meanings given such terms under the laws of the applicable State or Indian Tribe;

“(B) include any non-United States entity eligible for registration or registered to do business as a corporation or limited liability company under the laws of the applicable State or Indian Tribe;

“(C) do not include any entity that is—

“(i) a business concern that is an issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of that Act (15 U.S.C. 78o(d));

“(ii) a business concern constituted, sponsored, or chartered by a State or Indian Tribe, a political subdivision of a State or Indian Tribe, under an interstate compact between two or more States, by a department or agency of the United
States, or under the laws of the United States;

"(iii) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

"(iv) a credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

"(v) a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841))
or a savings and loan holding company (as defined in section 10(a) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a));


"(vii) an exchange or clearing agency (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c))
that is registered under section 6 or 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78f and 78q–1);
“(viii) an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) or an investment adviser (as defined in section 202(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(11))), if the company or adviser is registered with the Securities and Exchange Commission, has filed an application for registration which has not been denied, under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or the Investment Adviser Act of 1940 (15 U.S.C. 80b–1 et seq.), or is an investment adviser described under section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(l));

“(ix) an insurance company (as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2));

“(x) a registered entity (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)), or a futures commission merchant, introducing broker, commodity pool operator, or commodity trading advisor (as defined in section 1a of the Com-
modity Exchange Act (7 U.S.C. 1a)) that
is registered with the Commodity Futures
Trading Commission;

“(xi) a public accounting firm reg-
istered in accordance with section 102 of
the Sarbanes-Oxley Act (15 U.S.C. 7212)
or an entity controlling, controlled by, or
under common control of such a firm;

“(xii) a public utility that provides
telecommunications service, electrical
power, natural gas, or water and sewer
services, within the United States;

“(xiii) a church, charity, nonprofit en-
tity, or other organization that is described
in section 501(c), 527, or 4947(a)(1) of
the Internal Revenue Code of 1986, that
has not been denied tax exempt status, and
that has filed the most recently due annual
information return with the Internal Rev-
ue Service, if required to file such a re-
turn;

“(xiv) a financial market utility des-
ignated by the Financial Stability Over-
sight Council under section 804 of the
Dodd-Frank Wall Street Reform and Consumer Protection Act;

"(xv) an insurance producer (as defined in section 334 of the Gramm-Leach-Bliley Act);

"(xvi) any pooled investment vehicle that is operated or advised by a person described in clause (iii), (iv), (v), (vi), (viii), (ix), or (xi);

"(xvii) any business concern that—

"(I) employs more than 20 employees on a full-time basis in the United States;

"(II) files income tax returns in the United States demonstrating more than $5,000,000 in gross receipts or sales; and

"(III) has an operating presence at a physical office within the United States; or

"(xviii) any corporation or limited liability company formed and owned by an entity described in this clause or in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix),
(x), (xi), (xii), (xiii), (xiv), (xv), or (xvi);

and

"(D) do not include any individual business concern or class of business concerns which the Secretary of the Treasury and the Attorney General of the United States have jointly determined, by rule of otherwise, to be exempt from the requirements of subsection (a), if the Secretary and the Attorney General jointly determine that requiring beneficial ownership information from the business concern would not serve the public interest and would not assist law enforcement efforts to detect, prevent, or prosecute terrorism, money laundering, tax evasion, or other misconduct.

"(5) FINCEN.—The term ‘FinCEN’ means the Financial Crimes Enforcement Network of the Department of the Treasury.

"(6) INDIAN COUNTRY.—The term ‘Indian country’ has the meaning given that term in section 1151 of title 18.

"(7) INDIAN TRIBE.—The term ‘Indian Tribe’ has the meaning given that term under section 102 of the Federally Recognized Indian Tribe List Act of 1994.
“(8) PERSONAL IDENTIFICATION CARD.—The
term ‘personal identification card’ means an identi-
fication document issued by a State, Indian Tribe,
or local government to an individual solely for the
purpose of identification of that individual.

“(9) STATE.—The term ‘State’ means any
State, commonwealth, territory, or possession of the
United States, the District of Columbia, the Com-
monwealth of Puerto Rico, the Commonwealth of the
Northern Mariana Islands, American Samoa, Guam,
or the United States Virgin Islands.”.

(2) RULEMAKING.—

(A) IN GENERAL.—Not later than 1 year
after the date of enactment of this Act, the Sec-
retary of the Treasury shall issue regulations to
carry out this Act and the amendments made
by this Act, including, to the extent necessary,
to clarify the definitions in section 5333(d) of
title 31, United States Code.

(B) REVISION OF FINAL RULE.—Not later
than 1 year after the date of enactment of this
Act, the Secretary of the Treasury shall revise
the final rule titled “Customer Due Diligence
Requirements for Financial Institutions” (May
11, 2016; 81 Fed. Reg. 29397) to—
(i) bring the rule into conformance with this Act and the amendments made by this Act;

(ii) account for financial institutions’ access to comprehensive beneficial ownership information filed by corporations and limited liability companies, under threat of civil and criminal penalties, under this Act and the amendments made by this Act; and

(iii) reduce any burdens on financial institutions that are, in light of the enactment of this Act and the amendments made by this Act, unnecessary or duplicative.

(3) CONFORMING AMENDMENTS.—Title 31, United States Code, is amended—

(A) in section 5321(a)—

(i) in paragraph (1), by striking “sections 5314 and 5315” each place it appears and inserting “sections 5314, 5315, and 5333”; and

(ii) in paragraph (6), by inserting “(except section 5333)” after “sub-

chapter” each place it appears; and
(B) in section 5322, by striking "section 5315 or 5324" each place it appears and inserting "section 5315, 5324, or 5333".

(4) Table of Contents.—The table of contents of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5332 the following:

"5333. Transparent incorporation practices."

(b) Authorization of Appropriations.—There is authorized to be appropriated $20,000,000 for each of fiscal years 2020 and 2021 to the Financial Crimes Enforcement Network to carry out this Act and the amendments made by this Act.

c) Federal Contractors.—Not later than the first day of the first full fiscal year beginning at least 1 year after the date of the enactment of this Act, the Administrator for Federal Procurement Policy shall revise the Federal Acquisition Regulation maintained under section 1303(a)(1) of title 41, United States Code, to require any contractor or subcontractor who is subject to the requirement to disclose beneficial ownership information under section 5333 of title 31, United States Code, to provide the information required to be disclosed under such section to the Federal Government as part of any bid or proposal for a contract with a value threshold in excess
of the simplified acquisition threshold under section 134
of title 41, United States Code.

SEC. 4. STUDIES AND REPORTS.

(a) UPDATING OF BENEFICIAL OWNERSHIP INFOR-
MATION.—

(1) STUDY.—The Secretary of the Treasury, in
consultation with the Attorney General of the United
States, shall conduct a study to evaluate—

(A) the necessity of a requirement for cor-
porations and limited liability companies to up-
date the list of their beneficial owners within a
specified amount of time after the date of any
change in the list of beneficial owners or the in-
formation required to be provided relating to
each beneficial owner, taking into account the
annual filings required under section
5333(a)(1)(B)(i) of title 31, United States
Code, and the information contained in such
annual filings; and

(B) the burden that a requirement to up-
date the list of beneficial owners within a speci-
fied period of time after a change in such list
of beneficial owners would impose on corpora-
tions and limited liability companies.
(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall submit a report on the study required under paragraph (1) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(3) PUBLIC COMMENT.—The Secretary of the Treasury shall seek and consider public input, comments, and data in order to conduct the study required under subparagraph paragraph (1).

(b) OTHER LEGAL ENTITIES.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to the Congress a report—

(1) identifying each State or Indian Tribe that has procedures that enable persons to form or register under the laws of the State or Indian Tribe partnerships, trusts, or other legal entities, and the nature of those procedures;

(2) identifying each State or Indian Tribe that requires persons seeking to form or register partnerships, trusts, or other legal entities under the laws of the State or Indian Tribe to provide information about the beneficial owners (as that term is defined
in section 5333(d)(1) of title 31, United States
Code, as added by this Act) or beneficiaries of such
entities, and the nature of the required information;
(3) evaluating whether the lack of available
beneficial ownership information for partnerships,
trusts, or other legal entities—
(A) raises concerns about the involvement
of such entities in terrorism, money laundering,
tax evasion, securities fraud, or other mis-
conduct;
(B) has impeded investigations into enti-
ties suspected of such misconduct; and
(C) increases the costs to financial institu-
tions of complying with due diligence require-
ments imposed under the Bank Secrecy Act, the
USA PATRIOT Act, or other applicable Fed-
eral, State, or Tribal law; and
(4) evaluating whether the failure of the United
States to require beneficial ownership information
for partnerships and trusts formed or registered in
the United States has elicited international criticism
and what steps, if any, the United States has taken
or is planning to take in response.
(c) Effectiveness of Incorporation Prac-
tices.—Not later than 5 years after the date of enact-
ment of this Act, the Comptroller General of the United States shall conduct a study and submit to the Congress a report assessing the effectiveness of incorporation practices implemented under this Act and the amendments made by this Act in—

(1) providing law enforcement agencies with prompt access to reliable, useful, and complete beneficial ownership information; and

(2) strengthening the capability of law enforcement agencies to combat incorporation abuses, civil and criminal misconduct, and detect, prevent, or punish terrorism, money laundering, tax evasion, or other misconduct.

(d) **Annual Report on Beneficial Ownership Information.**—

(1) **Report.**—The Secretary of the Treasury shall issue an annual report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate with respect to the beneficial ownership information collected pursuant to section 5333 of title 31, United States Code, that contains—
(A) aggregate data on the number of beneficial owners per reporting corporation or limited liability company;

(B) the industries or type of business of each reporting corporation or limited liability company; and

(C) the locations of the beneficial owners.

(2) PRIVACY.—In issuing reports under paragraph (1), the Secretary shall not reveal the identities of beneficial owners or names of the reporting corporations or limited liability companies.

SEC. 5. DEFINITIONS.

In this Act, the terms “Bank Secrecy Act”, “beneficial owner”, “corporation”, and “limited liability company” have the meaning given those terms, respectively, under section 5333(d) of title 31, United States Code.

DIVISION B—COUNTER ACT OF 2019

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019” or the “COUNTER Act of 2019”.

(b) Table of Contents.—The table of contents for this Act is as follows:
Sec. 1. Short title; table of contents.
Sec. 2. Bank Secrecy Act definition.

TITLE I—STRENGTHENING TREASURY

Sec. 101. Improving the definition and purpose of the Bank Secrecy Act.
Sec. 102. Special hiring authority.
Sec. 103. Civil Liberties and Privacy Officer.
Sec. 104. Civil Liberties and Privacy Council.
Sec. 105. International coordination.
Sec. 106. Treasury Attachés Program.
Sec. 107. Increasing technical assistance for international cooperation.
Sec. 108. FinCEN Domestic Liaisons.
Sec. 109. FinCEN Exchange.
Sec. 110. Study and strategy on trade-based money laundering.
Sec. 111. Study and strategy on de-risking.
Sec. 112. AML examination authority delegation study.
Sec. 113. Study and strategy on Chinese money laundering.

TITLE II—IMPROVING AML/CFT OVERSIGHT

Sec. 201. Pilot program on sharing of suspicious activity reports within a financial group.
Sec. 202. Sharing of compliance resources.
Sec. 203. GAO Study on feedback loops.
Sec. 204. FinCEN study on BSA value.
Sec. 205. Sharing of threat pattern and trend information.
Sec. 206. Modernization and upgrading whistleblower protections.
Sec. 207. Certain violators barred from serving on boards of United States financial institutions.
Sec. 208. Additional damages for repeat Bank Secrecy Act violators.
Sec. 209. Justice annual report on deferred and non-prosecution agreements.
Sec. 211. Application of Bank Secrecy Act to dealers in antiquities.
Sec. 212. Geographic targeting order.
Sec. 213. Study and revisions to currency transaction reports and suspicious activity reports.
Sec. 214. Streamlining requirements for currency transaction reports and suspicious activity reports.

TITLE III—MODERNIZING THE AML SYSTEM

Sec. 301. Encouraging innovation in BSA compliance.
Sec. 302. Innovation Labs.
Sec. 303. Innovation Council.
Sec. 304. Testing methods rulemaking.
Sec. 305. FinCEN study on use of emerging technologies.
Sec. 306. Discretionary surplus funds.

(c) REFERENCES TO THIS ACT.—In this division—

(1) any reference to "this Act" shall be deemed

a reference to "this division"; and
(2) except as otherwise expressly provided, any reference to a section or other provision shall be deemed a reference to that section or other provision of this division.

SEC. 2. BANK SECRECY ACT DEFINITION.

Section 5312(a) of title 31, United States Code, is amended by adding at the end the following:

"(7) BANK SECRECY ACT.—The term ‘Bank Secrecy act’ means—

"(A) section 21 of the Federal Deposit Insurance Act;

"(B) chapter 2 of title I of Public Law 91–508; and

"(C) this subchapter.’.

TITLE I—STRENGTHENING TREASURY

SEC. 101. IMPROVING THE DEFINITION AND PURPOSE OF THE BANK SECRECY ACT.

Section 5311 of title 31, United States Code, is amended—

(1) by inserting “to protect our national security, to safeguard the integrity of the international financial system, and” before “to require”; and

(2) by inserting “to law enforcement and” before “in criminal”.

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SEC. 102. SPECIAL HIRING AUTHORITY.

(a) IN GENERAL.—Section 310 of title 31, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (g); and

(2) by inserting after subsection (e) the following:

"(d) SPECIAL HIRING AUTHORITY.—

"(1) IN GENERAL.—The Secretary of the Treasury may appoint, without regard to the provisions of sections 3309 through 3318 of title 5, candidates directly to positions in the competitive service (as defined in section 2102 of that title) in FinCEN.

"(2) PRIMARY RESPONSIBILITIES.—The primary responsibility of candidates appointed pursuant to paragraph (1) shall be to provide substantive support in support of the duties described in subparagraphs (A), (B), (E), and (F) of subsection (b)(2).’’. (b) REPORT.—Not later than 360 days after the date of enactment of this Act, and every year thereafter for 7 years, the Director of the Financial Crimes Enforcement Network shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—
(1) the number of new employees hired since the preceding report through the authorities described under section 310(d) of title 31, United States Code, along with position titles and associated pay grades for such hires; and

(2) a copy of any Federal Government survey of staff perspectives at the Office of Terrorism and Financial Intelligence, including findings regarding the Office and the Financial Crimes Enforcement Network from the most recently administered Federal Employee Viewpoint Survey.

SEC. 103. CIVIL LIBERTIES AND PRIVACY OFFICER.

(a) APPOINTMENT OF OFFICERS.—Not later than the end of the 3-month period beginning on the date of enactment of this Act, a Civil Liberties and Privacy Officer shall be appointed, from among individuals who are attorneys with expertise in data privacy laws—

(1) within each Federal functional regulator, by the head of the Federal functional regulator;

(2) within the Financial Crimes Enforcement Network, by the Secretary of the Treasury; and

(3) within the Internal Revenue Service Small Business and Self-Employed Tax Center, by the Secretary of the Treasury.
(b) DUTIES.—Each Civil Liberties and Privacy Officer shall, with respect to the applicable regulator, Network, or Center within which the Officer is located—

(1) be consulted each time Bank Secrecy Act or anti-money laundering regulations affecting civil liberties or privacy are developed or reviewed;

(2) be consulted on information-sharing programs, including those that provide access to personally identifiable information;

(3) ensure coordination and clarity between anti-money laundering, civil liberties, and privacy regulations;

(4) contribute to the evaluation and regulation of new technologies that may strengthen data privacy and the protection of personally identifiable information collected by each Federal functional regulator; and

(5) develop metrics of program success.

(c) DEFINITIONS.—For purposes of this section:

(1) BANK SECRECY ACT.—The term “Bank Secrecy Act” has the meaning given that term under section 5312 of title 31, United States Code.

(2) FEDERAL FUNCTIONAL REGULATOR.—The term “Federal functional regulator” means the Board of Governors of the Federal Reserve System,
the Comptroller of the Currency, the Federal De-
posit Insurance Corporation, the National Credit
Union Administration, the Securities and Exchange
Commission, and the Commodity Futures Trading
Commission.

**SEC. 104. CIVIL LIBERTIES AND PRIVACY COUNCIL.**

(a) *Establishment.*—There is established the Civil
Liberties and Privacy Council (hereinafter in this section
referred to as the “Council”), which shall consist of the
Civil Liberties and Privacy Officers appointed pursuant to
section 103.

(b) *Chair.*—The Director of the Financial Crimes
Enforcement Network shall serve as the Chair of the
Council.

(c) *Duty.*—The members of the Council shall coordi-
nate on activities related to their duties as Civil Liberties
Privacy Officers, but may not supplant the individual
agency determinations on civil liberties and privacy.

(d) *Meetings.*—The meetings of the Council—

(1) shall be at the call of the Chair, but in no
case may the Council meet less than quarterly;

(2) may include open and partially closed ses-
sions, as determined necessary by the Council; and

(3) shall include participation by public and pri-
ivate entities and law enforcement agencies.
(e) REPORT.—The Chair of the Council shall issue an annual report to the Congress on the program and policy activities, including the success of programs as measured by metrics of program success developed pursuant to section 103(b)(5), of the Council during the previous year and any legislative recommendations that the Council may have.

(f) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council.

SEC. 105. INTERNATIONAL COORDINATION.

(a) IN GENERAL.—The Secretary of the Treasury shall work with the Secretary’s foreign counterparts, including through the Financial Action Task Force, the International Monetary Fund, the World Bank, the Egmont Group of Financial Intelligence Units, the Organisation for Economic Co-operation and Development, and the United Nations, to promote stronger anti-money laundering frameworks and enforcement of anti-money laundering laws.

(b) COOPERATION GOAL.—In carrying out subsection (a), the Secretary of the Treasury may work directly with foreign counterparts and other organizations where the goal of cooperation can best be met.

(c) INTERNATIONAL MONETARY FUND.—
(1) Support for capacity of the international monetary fund to prevent money laundering and financing of terrorism.—
Title XVI of the International Financial Institutions Act (22 U.S.C. 262p et seq.) is amended by adding at the end the following:

"SEC. 1629. SUPPORT FOR CAPACITY OF THE INTERNATIONAL MONETARY FUND TO PREVENT MONEY LAUNDERING AND FINANCING OF TERRORISM.

“The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund to support the increased use of the administrative budget of the Fund for technical assistance that strengthens the capacity of Fund members to prevent money laundering and the financing of terrorism.”.

(2) National advisory council report to congress.—The Chairman of the National Advisory Council on International Monetary and Financial Policies shall include in the report required by section 1701 of the International Financial Institutions Act (22 U.S.C. 262r) a description of—

(A) the activities of the International Monetary Fund in the most recently completed fiscal year to provide technical assistance that
strengthens the capacity of Fund members to
prevent money laundering and the financing of
terrorism, and the effectiveness of the assist-
ance; and

(B) the efficacy of efforts by the United
States to support such technical assistance
through the use of the Fund’s administrative
budget, and the level of such support.

(3) SUNSET.—Effective on the date that is the
end of the 4-year period beginning on the date of en-
actment of this Act, section 1629 of the Inter-
national Financial Institutions Act, as added by
paragraph (1), is repealed.

SEC. 106. TREASURY ATTACHÉS PROGRAM.

(a) IN GENERAL.—Title 31, United States Code, is
amended by inserting after section 315 the following:

“§ 316. Treasury Attachés Program

“(a) IN GENERAL.—There is established the Treas-
ury Attachés Program, under which the Secretary of the
Treasury shall appoint employees of the Department of
the Treasury, after nomination by the Director of the Fi-
nancial Crimes Enforcement Network (‘FinCEN’), as a
Treasury attaché, who shall—

“(1) be knowledgeable about the Bank Secrecy
Act and anti-money laundering issues;
“(2) be co-located in a United States embassy;

“(3) perform outreach with respect to Bank Secrecy Act and anti-money laundering issues;

“(4) establish and maintain relationships with foreign counterparts, including employees of ministries of finance, central banks, and other relevant official entities;

“(5) conduct outreach to local and foreign financial institutions and other commercial actors, including—

“(A) information exchanges through FinCEN and FinCEN programs; and

“(B) soliciting buy-in and cooperation for the implementation of—

“(i) United States and multilateral sanctions; and

“(ii) international standards on anti-money laundering and the countering of the financing of terrorism; and

“(6) perform such other actions as the Secretary determines appropriate.

“(b) NUMBER OF ATTACHÉS.—The number of Treasury attachés appointed under this section at any one time shall be not fewer than 6 more employees than the number
of employees of the Department of the Treasury serving
as Treasury attachés on March 1, 2019.

“(c) COMPENSATION.—Each Treasury attaché ap-
pointed under this section and located at a United States
embassy shall receive compensation at the higher of—

“(1) the rate of compensation provided to a
Foreign Service officer at a comparable career level
serving at the same embassy; or

“(2) the rate of compensation the Treasury
attaché would otherwise have received, absent the
application of this subsection.

“(d) BANK SECRECY ACT DEFINED.—In this section,
the term ‘Bank Secrecy Act’ has the meaning given that
term under section 5312.”.

(b) CLERICAL AMENDMENT.—The table of contents
for chapter 3 of title 31, United States Code, is amended
by inserting after the item relating to section 315 the fol-
lowing:

“316. Treasury Attachés Program.”.

SEC. 107. INCREASING TECHNICAL ASSISTANCE FOR
INTERNATIONAL COOPERATION.

(a) IN GENERAL.—There is authorized to be appro-
 priated for each of fiscal years 2020 through 2024 to the
Secretary of the Treasury for purposes of providing tech-
nical assistance that promotes compliance with inter-
national standards and best practices, including in par-
ticular those aimed at the establishment of effective anti-
money laundering and countering the financing of ter-
rorism regimes, in an amount equal to twice the amount
authorized for such purpose for fiscal year 2019.

(b) Activity and Evaluation Report.—Not later
than 360 days after enactment of this Act, and every year
thereafter for five years, the Secretary of the Treasury
shall issue a report to the Congress on the assistance (as
described under subsection (a)) of the Office of Technical
Assistance of the Department of the Treasury con-
taining—

(1) a narrative detailing the strategic goals of
the Office in the previous year, with an explanation
of how technical assistance provided in the previous
year advances the goals;

(2) a description of technical assistance pro-
vided by the Office in the previous year, including
the objectives and delivery methods of the assist-
ance;

(3) a list of beneficiaries and providers (other
than Office staff) of the technical assistance;

(4) a description of how technical assistance
provided by the Office complements, duplicates, or
otherwise affects or is affected by technical assist-
ance provided by the international financial institu-
tions (as defined under section 1701(e) of the International Financial Institutions Act); and

(5) a copy of any Federal Government survey of staff perspectives at the Office of Technical Assistance, including any findings regarding the Office from the most recently administered Federal Employee Viewpoint Survey.

SEC. 108. FINCEN DOMESTIC LIAISONS.

Section 310 of title 31, United States Code, as amended by section 102, is further amended by inserting after subsection (d) the following:

“(e) FINCEN DOMESTIC LIAISONS.—

“(1) IN GENERAL.—The Director of FinCEN shall appoint at least 6 senior FinCEN employees as FinCEN Domestic Liaisons, who shall—

“(A) each be assigned to focus on a specific region of the United States;

“(B) be located at an office in such region (or co-located at an office of the Board of Governors of the Federal Reserve System in such region); and

“(C) perform outreach to BSA officers at financial institutions (including non-bank financial institutions) and persons who are not financial institutions, especially with respect to ac-
tions taken by FinCEN that require specific ac-
tions by, or have specific effects on, such insti-
tutions or persons, as determined by the Direc-
tor.

“(2) DEFINITIONS.—In this subsection:

“(A) BSA OFFICER.—The term ‘BSA offi-
cer’ means an employee of a financial institu-
tion whose primary job responsibility involves
compliance with the Bank Secrecy Act, as such
term is defined under section 5312.

“(B) FINANCIAL INSTITUTION.—The term
‘financial institution’ has the meaning given
that term under section 5312.”.

SEC. 109. FINCEN EXCHANGE.

Section 310 of title 31, United States Code, as
amended by section 108, is further amended by inserting
after subsection (e) the following:

“(f) FINCEN EXCHANGE.—

“(1) ESTABLISHMENT.—The FinCEN Ex-
change is hereby established within FinCEN, which
shall consist of the FinCEN Exchange program of
FinCEN in existence on the day before the date of
enactment of this paragraph.

“(2) PURPOSE.—The FinCEN Exchange shall
facilitate a voluntary public-private information
sharing partnership among law enforcement, financial institutions, and FinCEN to—

“(A) effectively and efficiently combat money laundering, terrorism financing, organized crime, and other financial crimes;

“(B) protect the financial system from illicit use; and

“(C) promote national security.

“(3) REPORT.—

“(A) IN GENERAL.—Not later than one year after the date of enactment of this subsection, and annually thereafter for the next five years, the Secretary of the Treasury shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

“(i) an analysis of the efforts undertaken by the FinCEN Exchange and the results of such efforts;

“(ii) an analysis of the extent and effectiveness of the FinCEN Exchange, including any benefits realized by law enforcement from partnership with financial institutions; and
“(iii) any legislative, administrative,
or other recommendations the Secretary
may have to strengthen FinCEN Exchange
efforts.

“(B) CLASSIFIED ANNEX.—Each report
under subparagraph (A) may include a classi-
fi ed annex.

“(4) INFORMATION SHARING REQUIREMENT.—
Information shared pursuant to this subsection shall
be shared in compliance with all other applicable
Federal laws and regulations.

“(5) RULE OF CONSTRUCTION.—Nothing under
this subsection may be construed to create new in-
formation sharing authorities related to the Bank
Secrecy Act (as such term is defined under section
5312 of title 31, United States Code).

“(6) FINANCIAL INSTITUTION DEFINED.—In
this subsection, the term ‘financial institution’ has
the meaning given that term under section 5312.”.

SEC. 110. STUDY AND STRATEGY ON TRADE-BASED MONEY
LAUNDERING.

(a) Study.—The Secretary of the Treasury shall
carry out a study, in consultation with appropriate private
sector stakeholders and Federal departments and agen-
cies, on trade-based money laundering.
(b) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary shall issue a report to the Congress containing—

(1) all findings and determinations made in carrying out the study required under subsection (a); and

(2) proposed strategies to combat trade-based money laundering.

(c) CLASSIFIED ANNEX.—The report required under this section may include a classified annex.

(d) CONTRACTING AUTHORITY.—The Secretary may contract with a private third-party to carry out the study required under this section. The authority of the Secretary to enter into contracts under this subsection shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts.

SEC. 111. STUDY AND STRATEGY ON DE-RISKING.

(a) REVIEW.—The Secretary of the Treasury, in consultation with appropriate private sector stakeholders, examiners, and the Federal functional regulators (as defined under section 103) and other relevant stakeholders, shall undertake a formal review of—
(1) any adverse consequences of financial institutions de-risking entire categories of relationships, including charities, embassy accounts, money services businesses (as defined under section 1010.100(ff) of title 31, Code of Federal Regulations) and their agents, countries, international and domestic regions, and respondent banks;

(2) the reasons why financial institutions are engaging in de-risking;

(3) the association with and effects of de-risking on money laundering and financial crime actors and activities;

(4) the most appropriate ways to promote financial inclusion, particularly with respect to developing countries, while maintaining compliance with the Bank Secrecy Act, including an assessment of policy options to—

(A) more effectively tailor Federal actions and penalties to the size of foreign financial institutions and any capacity limitations of foreign governments; and

(B) reduce compliance costs that may lead to the adverse consequences described in paragraph (1);
(5) formal and informal feedback provided by examiners that may have led to de-risking;

(6) the relationship between resources dedicated to compliance and overall sophistication of compliance efforts at entities that may be experiencing de-risking versus those that have not experienced de-risking; and

(7) any best practices from the private sector that facilitate correspondent bank relationships.

(b) DE-RISKING STRATEGY.—The Secretary shall develop a strategy to reduce de-risking and adverse consequences related to de-risking.

(c) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary, in consultation with the Federal functional regulators and other relevant stakeholders, shall issue a report to the Congress containing—

(1) all findings and determinations made in carrying out the study required under subsection (a); and

(2) the strategy developed pursuant to subsection (b).

(d) DEFINITIONS.—In this section:

(1) DE-RISKING.—The term "de-risking" means the wholesale closing of accounts or limiting
of financial services for a category of customer due
to unsubstantiated risk as it relates to compliance
with the Bank Secrecy Act.

(2) BSA TERMS.—The terms “Bank Secrecy
Act” and “financial institution” have the meaning
given those terms, respectively, under section 5312
off title 31, United States Code.

SEC. 112. AML EXAMINATION AUTHORITY DELEGATION
STUDY.

(a) STUDY.—The Secretary of the Treasury shall
carry out a study on the Secretary’s delegation of exam-
ination authority under the Bank Secrecy Act, including—

(1) an evaluation of the efficacy of the delega-
tion, especially with respect to the mission of the
Bank Secrecy Act;

(2) whether the delegated agencies have appro-
priate resources to perform their delegated respon-
sibilities; and

(3) whether the examiners in delegated agencies
have sufficient training and support to perform their
responsibilities.

(b) REPORT.—Not later than one year after the date
of enactment of this Act, the Secretary of the Treasury
shall submit to the Committee on Financial Services of
the House of Representatives and the Committee on
Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) all findings and determinations made in carrying out the study required under subsection (a); and

(2) recommendations to improve the efficacy of delegation authority, including the potential for delegation of any or all such authority where it may be appropriate.

(c) BANK SECRECY ACT DEFINED.—The term “Bank Secrecy Act” has the meaning given that term under section 5312 off title 31, United States Code.

SEC. 113. STUDY AND STRATEGY ON CHINESE MONEY LAUNDERING.

(a) STUDY.—The Secretary of the Treasury shall carry out a study on the extent and effect of Chinese money laundering activities in the United States, including territories and possessions of the United States, and worldwide.

(b) STRATEGY TO COMBAT CHINESE MONEY LAUNDERING.—Upon the completion of the study required under subsection (a), the Secretary shall, in consultation with such other Federal departments and agencies as the Secretary determines appropriate, develop a strategy to combat Chinese money laundering activities.
(c) Report.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Secretary of the Treasury shall issue a report to Congress containing—

(1) all findings and determinations made in carrying out the study required under subsection (a); and

(2) the strategy developed under subsection (b).

**TITLE II—IMPROVING AML/CFT OVERSIGHT**

**SEC. 201. PILOT PROGRAM ON SHARING OF SUSPICIOUS ACTIVITY REPORTS WITHIN A FINANCIAL GROUP.**

(a) In General.—

(1) Sharing with foreign branches and affiliates.—Section 5318(g) of title 31, United States Code, is amended by adding at the end the following:

““(5) Pilot program on sharing with foreign branches, subsidiaries, and affiliates.—

“(A) In general.—The Secretary of the Treasury shall issue rules establishing the pilot program described under subparagraph (B), subject to such controls and restrictions as the Director of the Financial Crimes Enforcement
Network determines appropriate, including controls and restrictions regarding participation by financial institutions and jurisdictions in the pilot program. In prescribing such rules, the Secretary shall ensure that the sharing of information described under such subparagraph (B) is subject to appropriate standards and requirements regarding data security and the confidentiality of personally identifiable information.

"(B) PILOT PROGRAM DESCRIBED.—The pilot program required under this paragraph shall—

"(i) permit a financial institution with a reporting obligation under this subsection to share reports (and information on such reports) under this subsection with the institution’s foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks, notwithstanding any other provision of law except subparagraphs (A) and (C);

"(ii) terminate on the date that is five years after the date of enactment of this paragraph, except that the Secretary may extend the pilot program for up to two
years upon submitting a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—

“(I) a certification that the extension is in the national interest of the United States, with a detailed explanation of the reasons therefor;

“(II) an evaluation of the usefulness of the pilot program, including a detailed analysis of any illicit activity identified or prevented as a result of the program; and

“(III) a detailed legislative proposal providing for a long-term extension of the pilot program activities, including expected budgetary resources for the activities, if the Secretary determines that a long-term extension is appropriate.

“(C) PROHIBITION INVOLVING CERTAIN JURISDICTIONS.—In issuing the regulations required under subparagraph (A), the Secretary may not permit a financial institution to share
information on reports under this subsection with a foreign branch, subsidiary, or affiliate located in—

“(i) the People’s Republic of China;

“(ii) the Russian Federation; or

“(iii) a jurisdiction that—

“(I) is subject to countermeasures imposed by the Federal Government;

“(II) is a state sponsor of terrorism; or

“(III) the Secretary has determined cannot reasonably protect the privacy and confidentiality of such information or would otherwise use such information in a manner that is not consistent with the national interest of the United States.

“(D) Implementation Updates.—Not later than 360 days after the date rules are issued under subparagraph (A), and annually thereafter for three years, the Secretary, or the Secretary’s designee, shall brief the Committee on Financial Services of the House of Rep-
resentatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on—

“(i) the degree of any information sharing permitted under the pilot program, and a description of criteria used by the Secretary to evaluate the appropriateness of the information sharing;

“(ii) the effectiveness of the pilot program in identifying or preventing the violation of a United States law or regulation, and mechanisms that may improve such effectiveness; and

“(iii) any recommendations to amend the design of the pilot program.

“(E) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as limiting the Secretary’s authority under provisions of law other than this paragraph to establish other permissible purposes or methods for a financial institution sharing reports (and information on such reports) under this subsection with the institution’s foreign headquarters or with other branches of the same institution.

“(F) NOTICE OF USE OF OTHER AUTHORITY.—If the Secretary, pursuant to any author-
ity other than that provided under this para-
graph, permits a financial institution to share
information on reports under this subsection
with a foreign branch, subsidiary, or affiliate lo-
cated in a foreign jurisdiction, the Secretary
shall notify the Committee on Financial Serv-
ces of the House of Representatives and the
Committee on Banking, Housing, and Urban
Affairs of such permission and the applicable
foreign jurisdiction.

“(6) Treatment of foreign jurisdiction-
originated reports.—A report received by a fi-
nancial institution from a foreign affiliate with re-
spect to a suspicious transaction relevant to a pos-
sible violation of law or regulation shall be subject
to the same confidentiality requirements provided
under this subsection for a report of a suspicious
transaction described under paragraph (1).”.

(2) Notification prohibitions.—Section
5318(g)(2)(A) of title 31, United States Code, is
amended—

(A) in clause (i), by inserting after “trans-
action has been reported” the following: “or
otherwise reveal any information that would re-
veal that the transaction has been reported”;
and

(B) in clause (ii), by inserting after “transaction has been reported,” the following: “or otherwise reveal any information that would reveal that the transaction has been reported.”.

(b) Rulemaking.—Not later than the end of the 360-day period beginning on the date of enactment of this Act, the Secretary of the Treasury shall issue regulations to carry out the amendments made by this section.

SEC. 202. SHARING OF COMPLIANCE RESOURCES.

(a) In General.—Section 5318 of title 31, United States Code, is amended by adding at the end the following:

“(o) Sharing of Compliance Resources.—

“(1) Sharing permitted.—Two or more financial institutions may enter into collaborative arrangements in order to more efficiently comply with the requirements of this subchapter.

“(2) Outreach.—The Secretary of the Treasury and the appropriate supervising agencies shall carry out an outreach program to provide financial institutions with information, including best practices, with respect to the sharing of resources described under paragraph (1).”.

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(b) RULE OF CONSTRUCTION.—The amendment made by subsection (a) may not be construed to require financial institutions to share resources.

SEC. 203. GAO STUDY ON FEEDBACK LOOPS.

(a) STUDY.—The Comptroller General of the United States shall carry out a study on—

(1) best practices within the United States Government for providing feedback ("feedback loop") to relevant parties (including regulated private entities) on the usage and usefulness of personally identifiable information ("PII"), sensitive-but-unclassified ("SBU") data, or similar information provided by such parties to Government users of such information and data (including law enforcement or regulators); and

(2) any practices or standards inside or outside the United States for providing feedback through sensitive information and public-private partnership information sharing efforts, specifically related to efforts to combat money laundering and other forms of illicit finance.

(b) REPORT.—Not later than the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall issue a report to the Committee on Banking, Housing, and Urban Affairs...
of the Senate and the Committee on Financial Services
of the House of Representatives containing—

(1) all findings and determinations made in car-
rying out the study required under subsection (a);

(2) with respect to each of paragraphs (1) and
(2) of subsection (a), any best practices or signifi-
cant concerns identified by the Comptroller General,
and their applicability to public-private partnerships
and feedback loops with respect to U.S. efforts to
combat money laundering and other forms of illicit
finance; and

(3) recommendations to reduce or eliminate any
unnecessary Government collection of the informa-
tion described under subsection (a)(1).

SEC. 204. FINCEN STUDY ON BSA VALUE.

(a) Study.—The Director of the Financial Crimes
Enforcement Network shall carry out a study on Bank Se-
crecy Act value.

(b) Report.—Not later than the end of the 30-day
period beginning on the date the study under subsection
(a) is completed, the Director shall issue a report to the
Committee on Financial Services of the House of Rep-
resentatives and the Committee on Banking, Housing, and
Urban Affairs of the Senate containing all findings and
determinations made in carrying out the study required under this section.

(c) **CLASSIFIED ANNEX.**—The report required under this section may include a classified annex, if the Director determines it appropriate.

(d) **BANK SECRECY ACT DEFINED.**—For purposes of this section, the term "Bank Secrecy Act" has the meaning given that term under section 5312 of title 31, United States Code.

**SEC. 205. SHARING OF THREAT PATTERN AND TREND INFORMATION.**

Section 5318(g) of title 31, United States Code, as amended by section 201(a)(1), is further amended by adding at the end the following:

"(7) **SHARING OF THREAT PATTERN AND TREND INFORMATION.**—

"(A) **SAR ACTIVITY REVIEW.**—The Director of the Financial Crimes Enforcement Network shall restart publication of the ‘SAR Activity Review – Trends, Tips & Issues’, on not less than a semi-annual basis, to provide meaningful information about the preparation, use, and value of reports filed under this subsection by financial institutions, as well as other re-
ports filed by financial institutions under the
Bank Secrecy Act.

“(B) INCLUSION OF TYPOLOGIES.—In each
publication described under subparagraph (A),
the Director shall provide financial institutions
with typologies, including data that can be
adapted in algorithms (including for artificial
intelligence and machine learning programs)
where appropriate, on emerging money laun-
dering and counter terror financing threat pat-
terns and trends.

“(C) TYPOLOGY DEFINED.—For purposes
of this paragraph, the term ‘typology’ means
the various techniques used to launder money
or finance terrorism.”.

SEC. 206. MODERNIZATION AND UPGRADING WHISTLE-
BLOWER PROTECTIONS.

(a) REWARDS.—Section 5323(d) of title 31, United
States Code, is amended to read as follows:

“(d) SOURCE OF REWARDS.—For the purposes of
paying a reward under this section, the Secretary may,
subject to amounts made available in advance by appro-
priation Acts, use criminal fine, civil penalty, or forfeiture
amounts recovered based on the original information with
respect to which the reward is being paid.”.
(b) Whistleblower Incentives.—Chapter 53 of title 31, United States Code, is amended—

(1) by inserting after section 5323 the following:

§ 5323A. Whistleblower incentives

"(a) Definitions.—In this section:

"(1) Covered judicial or administrative action.—The term ‘covered judicial or administrative action’ means any judicial or administrative action brought by FinCEN under the Bank Secrecy Act that results in monetary sanctions exceeding $1,000,000.

"(2) FinCEN.—The term ‘FinCEN’ means the Financial Crimes Enforcement Network.

"(3) Monetary sanctions.—The term ‘monetary sanctions’, when used with respect to any judicial or administrative action, means—

"(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and

"(B) any monies deposited into a disgorgement fund as a result of such action or any settlement of such action.

"(4) Original information.—The term ‘original information’ means information that—
“(A) is derived from the independent knowledge or analysis of a whistleblower;

“(B) is not known to FinCEN from any other source, unless the whistleblower is the original source of the information; and

“(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

“(5) RELATED ACTION.—The term ‘related action’, when used with respect to any judicial or administrative action brought by FinCEN, means any judicial or administrative action that is based upon original information provided by a whistleblower that led to the successful enforcement of the action.

“(6) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(7) WHISTLEBLOWER.—The term ‘whistleblower’ means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of laws enforced by FinCEN, in a manner established, by rule or regulation, by FinCEN.
“(b) AWARDS.—

“(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the Secretary, under such rules as the Secretary may issue and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to FinCEN that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action.

“(2) SOURCE OF AWARDS.—For the purposes of paying any award under paragraph (1), the Secretary may, subject to amounts made available in advance by appropriation Acts, use monetary sanction amounts recovered based on the original information with respect to which the award is being paid.

“(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

“(1) DETERMINATION OF AMOUNT OF AWARD.—
“(A) DISCRETION.—The determination of
the amount of an award made under subsection
(b) shall be in the discretion of the Secretary.

“(B) CRITERIA.—In responding to a dis-
closure and determining the amount of an
award made, FinCEN staff shall meet with the
whistleblower to discuss evidence disclosed and
rebuttals to the disclosure, and shall take into
consideration—

“(i) the significance of the informa-
tion provided by the whistleblower to the
success of the covered judicial or adminis-
trative action;

“(ii) the degree of assistance provided
by the whistleblower and any legal rep-
resentative of the whistleblower in a cov-
ered judicial or administrative action;

“(iii) the mission of FinCEN in deter-
ring violations of the law by making
awards to whistleblowers who provide in-
formation that lead to the successful en-
forcement of such laws; and

“(iv) such additional relevant factors
as the Secretary may establish by rule.
“(2) **Denial of Award.**—No award under subsection (b) shall be made—

“(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to FinCEN, a member, officer, or employee of—

“(i) an appropriate regulatory agency;

“(ii) the Department of Justice;

“(iii) a self-regulatory organization; or

“(iv) a law enforcement organization;

“(B) to any whistleblower who is convicted of a criminal violation, or who the Secretary has a reasonable basis to believe committed a criminal violation, related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

“(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the Bank Secrecy Act and for whom such submission would be contrary to its requirements; or

“(D) to any whistleblower who fails to submit information to FinCEN in such form as the Secretary may, by rule, require.
“(3) Statement of Reasons.—For any decision granting or denying an award, the Secretary shall provide to the whistleblower a statement of reasons that includes findings of fact and conclusions of law for all material issues.

“(d) Representation.—

“(1) Permitted Representation.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

“(2) Required Representation.—

“(A) In General.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

“(B) Disclosure of Identity.—Prior to the payment of an award, a whistleblower shall disclose their identity and provide such other information as the Secretary may require, directly or through counsel for the whistleblower.

“(e) Appeals.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Secretary. Any such determination, except the determination of the
amount of an award if the award was made in accordance
with subsection (b), may be appealed to the appropriate
court of appeals of the United States not more than 30
days after the determination is issued by the Secretary.
The court shall review the determination made by the Sec-
retary in accordance with section 706 of title 5.

“(f) EMPLOYEE PROTECTIONS.—The Secretary of
the Treasury shall issue regulations protecting a whistle-
blower from retaliation, which shall be as close as prac-
ticable to the employee protections provided for under sec-
tion 1057 of the Consumer Financial Protection Act of
2010.”; and

(2) in the table of contents for such chapter, by
inserting after the item relating to section 5323 the
following new item:

“5323A. Whistleblower incentives.”.

SEC. 207. CERTAIN VIOLATORS BARRED FROM SERVING ON

BOARDS OF UNITED STATES FINANCIAL IN-
STITUTIONS.

Section 5321 of title 31, United States Code, is
amended by adding at the end the following:

“(f) CERTAIN VIOLATORS BARRED FROM SERVING
ON BOARDS OF UNITED STATES FINANCIAL INSTITU-
TIONS.—

“(1) IN GENERAL.—An individual found to
have committed an egregious violation of a provision
of (or rule issued under) the Bank Secrecy Act shall
be barred from serving on the board of directors of
a United States financial institution for a 10-year
period beginning on the date of such finding.

“(2) EGREGIOUS VIOLATION DEFINED.—With
respect to an individual, the term ‘egregious viola-
tion’ means—

“(A) a felony criminal violation for which
the individual was convicted; and

“(B) a civil violation where the individual
willfully committed such violation and the viola-
tion facilitated money laundering or the financ-
ing of terrorism.”.

SEC. 208. ADDITIONAL DAMAGES FOR REPEAT BANK SE-
CRECY ACT VIOLATORS.

(a) IN GENERAL.—Section 5321 of title 31, United
States Code, as amended by section 208, is further amend-
ed by adding at the end the following:

“(g) ADDITIONAL DAMAGES FOR REPEAT VIOLA-
TORS.—In addition to any other fines permitted by this
section and section 5322, with respect to a person who
has previously been convicted of a criminal provision of
(or rule issued under) the Bank Secrecy Act or who has
admitted, as part of a deferred- or non-prosecution agree-
ment, to having previously committed a violation of a
criminal provision of (or rule issued under) the Bank Secrecy Act, the Secretary may impose an additional civil penalty against such person for each additional such violation in an amount equal to up three times the profit gained or loss avoided by such person as a result of the violation.”.

(b) Prospective Application of Amendment.—

For purposes of determining whether a person has committed a previous violation under section 5321(g) of title 31, United States Code, such determination shall only include violations occurring after the date of enactment of this Act.

SEC. 209. JUSTICE ANNUAL REPORT ON DEFERRED AND NON-PROSECUTION AGREEMENTS.

(a) Annual Report.—The Attorney General shall issue an annual report, every year for the five years beginning on the date of enactment of this Act, to the Committees on Financial Services and the Judiciary of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate containing—

(1) a list of deferred prosecution agreements and non-prosecution agreements that the Attorney General has entered into during the previous year
with any person with respect to a violation or sus-
pected violation of the Bank Secrecy Act;

(2) the justification for entering into each such
agreement;

(3) the list of factors that were taken into ac-
count in determining that the Attorney General
should enter into each such agreement; and

(4) the extent of coordination the Attorney
General conducted with the Financial Crimes En-
forcement Network prior to entering into each such
agreement.

(b) CLASSIFIED ANNEX.—Each report under sub-
section (a) may include a classified annex.

(c) BANK SECRECY ACT DEFINED.—For purposes of
this section, the term "Bank Secrecy Act" has the mean-
ing given that term under section 5312 of title 31, United
States Code.

18 SEC. 210. RETURN OF PROFITS AND BONUSES.

(a) IN GENERAL.—Section 5322 of title 31, United
States Code, is amended by adding at the end the fol-
lowing:

"(e) RETURN OF PROFITS AND BONUSES.—A person
convicted of violating a provision of (or rule issued under)
the Bank Secrecy Act shall—\
“(1) in addition to any other fine under this section, be fined in an amount equal to the profit gained by such person by reason of such violation, as determined by the court; and

“(2) if such person is an individual who was a partner, director, officer, or employee of a financial institution at the time the violation occurred, repay to such financial institution any bonus paid to such individual during the Federal fiscal year in which the violation occurred or the Federal fiscal year after which the violation occurred.”.

(b) RULE OF CONSTRUCTION.—The amendment made by subsection (a) may not be construed to prohibit a financial institution from requiring the repayment of a bonus paid to a partner, director, officer, or employee if the financial institution determines that the partner, director, officer, or employee engaged in unethical, but non-criminal, activities.

SEC. 211. APPLICATION OF BANK SECRECY ACT TO DEALERS IN ANTIQUITIES.

(a) IN GENERAL.—Section 5312(a)(2) of title 31, United States Code, is amended—

(1) in subparagraph (Y), by striking “or” at the end;
(2) by redesignating subparagraph (Z) as sub-
paragraph (AA); and

(3) by inserting after subsection (Y) the fol-
lowing:

“(Z) a person trading or acting as an
intermediary in the trade of antiquities, includ-
ing an advisor, consultant or any other person
who engages as a business in the solicitation of
the sale of antiquities; or”.

(b) Study on the Facilitation of Money Lau-
dering and Terror Finance Through the Trade of
Works of Art or Antiquities.—

(1) Study.—The Secretary of the Treasury, in
coordination with Federal Bureau of Investigation,
the Attorney General, and Homeland Security Inves-
tigations, shall perform a study on the facilitation of
money laundering and terror finance through the
trade of works of art or antiquities, including an
analysis of—

(A) the extent to which the facilitation of
money laundering and terror finance through
the trade of works of art or antiquities may
enter or affect the financial system of the
United States, including any qualitative data or
statistics;
(B) whether thresholds and definitions should apply in determining which entities to regulate;

(C) an evaluation of which markets, by size, entity type, domestic or international geographical locations, or otherwise, should be subject to regulations, but only to the extent such markets are not already required to report on the trade of works of art or antiquities to the Federal Government;

(D) an evaluation of whether certain exemptions should apply; and

(E) any other points of study or analysis the Secretary determines necessary or appropriate.

(2) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing all findings and determinations made in carrying out the study required under paragraph (1).
(c) Rulemaking.—Not later than the end of the
180-day period beginning on the date the Secretary issues
the report required under subsection (b)(2), the Secretary
shall issue regulations to carry out the amendments made
by subsection (a).

SEC. 212. GEOGRAPHIC TARGETING ORDER.

The Secretary of the Treasury shall issue a geo-
graphic targeting order, similar to the order issued by the
Financial Crimes Enforcement Network on November 15,
2018, that—

(1) applies to commercial real estate to the
same extent, with the exception of having the same
thresholds, as the order issued by FinCEN on No-
vember 15, 2018, applies to residential real estate;
and

(2) establishes a specific threshold for commer-
cial real estate.

SEC. 213. STUDY AND REVISIONS TO CURRENCY TRANS- ACTION REPORTS AND SUSPICIOUS ACTIVITY REPORTS.

(a) Currency Transaction Reports.—

(1) CTR indexed for inflation.—

(A) In general.—Every 5 years after the
date of enactment of this Act, the Secretary of
the Treasury shall revise regulations issued
with respect to section 5313 of title 31, United States Code, to update each $10,000 threshold amount in such regulation to reflect the change in the Consumer Price Index for All Urban Consumers published by the Department of Labor, rounded to the nearest $100. For purposes of calculating the change described in the previous sentence, the Secretary shall use $10,000 as the base amount and the date of enactment of this Act as the base date.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Secretary may make appropriate adjustments to the threshold amounts described under subparagraph (A) in high-risk areas (e.g., High Intensity Financial Crime Areas or HIFCAs), if the Secretary has demonstrable evidence that shows a threshold raise would increase serious crimes, such as trafficking, or endanger national security.

(2) GAO CTR STUDY.—

(A) STUDY.—The Comptroller General of the United States shall carry out a study of currency transaction reports. Such study shall include—
(i) a review (carried out in consultation with the Secretary of the Treasury, the Financial Crimes Enforcement Network, the United States Attorney General, the State Attorneys General, and State, Tribal, and local law enforcement) of the effectiveness of the current currency transaction reporting regime;

(ii) an analysis of the importance of currency transaction reports to law enforcement; and

(iii) an analysis of the effects of raising the currency transaction report threshold.

(B) REPORT.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Comptroller General shall issue a report to the Secretary of the Treasury and the Congress containing—

(i) all findings and determinations made in carrying out the study required under subparagraph (A); and

(ii) recommendations for improving the current currency transaction reporting regime.
(b) Modified SARs Study and Design.—

(1) Study.—The Director of the Financial Crimes Enforcement Network shall carry out a study, in consultation with industry stakeholders (including money services businesses, community banks, and credit unions), regulators, and law enforcement, of the design of a modified suspicious activity report form for certain customers and activities. Such study shall include—

(A) an examination of appropriate optimal SARs thresholds to determine the level at which a modified SARs form could be employed;

(B) an evaluation of which customers or transactions would be appropriate for a modified SAR, including—

(i) seasoned business customers;

(ii) financial technology (Fintech) firms;

(iii) structuring transactions; and

(iv) any other customer or transaction that may be appropriate for a modified SAR; and

(C) an analysis of the most effective methods to reduce the regulatory burden imposed on financial institutions in complying with the
Bank Secrecy Act, including an analysis of the
effect of—

(i) modifying thresholds;

(ii) shortening forms;

(iii) combining Bank Secrecy Act
forms;

(iv) filing reports in periodic batches;

and

(v) any other method that may reduce
the regulatory burden.

(2) Study Considerations.—In carrying out
the study required under paragraph (1), the Direc-
tor shall seek to balance law enforcement priorities,
regulatory burdens experienced by financial institu-
tions, and the requirement for reports to have a
“high degree of usefulness to law enforcement”
under the Bank Secrecy Act.

(3) Report.—Not later than the end of the 1-
year period beginning on the date of enactment of
this Act, the Director shall issue a report to Con-
gress containing—

(A) all findings and determinations made
in carrying out the study required under sub-
section (a); and
(B) sample designs of modified SARs forms based on the study results.

(4) CONTRACTING AUTHORITY.—The Director may contract with a private third-party to carry out the study required under this subsection. The authority of the Director to enter into contracts under this paragraph shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts.

(c) DEFINITIONS.—For purposes of this section:

(1) BANK SECRECY ACT.—The term “Bank Secrecy Act” has the meaning given that term under section 5312 of title 31, United States Code.

(2) REGULATORY BURDEN.—The term “regulatory burden” means the man-hours to complete filings, cost of data collection and analysis, and other considerations of chapter 35 of title 44, United States Code (commonly referred to as the Paperwork Reduction Act).

(3) SAR; SUSPICIOUS ACTIVITY REPORT.—The term “SAR” and “suspicious activity report” mean a report of a suspicious transaction under section 5318(g) of title 31, United States Code.

(4) SEASONED BUSINESS CUSTOMER.—The term “seasoned business customer”, shall have such
meaning as the Secretary of the Treasury shall pre-
scribe, which shall include any person that—

(A) is incorporated or organized under the
laws of the United States or any State, or is
registered as, licensed by, or otherwise eligible
to do business within the United States, a
State, or political subdivision of a State;

(B) has maintained an account with a fi-
nancial institution for a length of time as deter-
mined by the Secretary; and

(C) meet such other requirements as the
Secretary may determine necessary or appro-
priate.

SEC. 214. STREAMLINING REQUIREMENTS FOR CURRENCY
TRANSACTION REPORTS AND SUSPICIOUS
ACTIVITY REPORTS.

(a) Review.—The Secretary of the Treasury (in con-
sultation with Federal law enforcement agencies, the Di-
rector of National Intelligence, and the Federal functional
regulators and in consultation with other relevant stake-
holders) shall undertake a formal review of the current
financial institution reporting requirements under the
Bank Secrecy Act and its implementing regulations and
propose changes to further reduce regulatory burdens, and
ensure that the information provided is of a “high degree
of usefulness” to law enforcement, as set forth under sec-

tion 5311 of title 31, United States Code.

(b) CONTENTS.—The review required under sub-

section (a) shall include a study of—

(1) whether the timeframe for filing a sus-

picious activity report should be increased from 30

days;

(2) whether or not currency transaction report

and suspicious activity report thresholds should be

tied to inflation or otherwise periodically be ad-

justed;

(3) whether the circumstances under which a fi-

nancial institution determines whether to file a “con-

tinuing suspicious activity report”, or the processes

followed by a financial institution in determining

whether to file a “continuing suspicious activity re-

port” (or both) can be narrowed;

(4) analyzing the fields designated as “critical”

on the suspicious activity report form and whether

the number of fields should be reduced;

(5) the increased use of exemption provisions to

reduce currency transaction reports that are of little

or no value to law enforcement efforts;
(6) the current financial institution reporting requirements under the Bank Secrecy Act and its implementing regulations and guidance; and

(7) such other items as the Secretary determines appropriate.

(c) REPORT.—Not later than the end of the one year period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with law enforcement and persons subject to Bank Secrecy Act requirements, shall issue a report to the Congress containing all findings and determinations made in carrying out the review required under subsection (a).

(d) DEFINITIONS.—For purposes of this section:

(1) FEDERAL FUNCTIONAL REGULATOR.—The term “Federal functional regulator” has the meaning given that term under section 103.

(2) OTHER TERMS.—The terms “Bank Secrecy Act” and “financial institution” have the meaning given those terms, respectively, under section 5312 of title 31, United States Code.
TITLE III—MODERNIZING THE
AML SYSTEM

SEC. 301. ENCOURAGING INNOVATION IN BSA COMPLIANCE.

Section 5318 of title 31, United States Code, as amended by section 202, is further amended by adding at the end the following:

“(p) ENCOURAGING INNOVATION IN COMPLIANCE.—

“(1) IN GENERAL.—The Federal functional regulators shall encourage financial institutions to consider, evaluate, and, where appropriate, responsibly implement innovative approaches to meet the requirements of this subchapter, including through the use of innovation pilot programs.

“(2) EXEMPTIVE RELIEF.—The Secretary, pursuant to subsection (a), may provide exemptions from the requirements of this subchapter if the Secretary determines such exemptions are necessary to facilitate the testing and potential use of new technologies and other innovations.

“(3) RULE OF CONSTRUCTION.—This subsection may not be construed to require financial institutions to consider, evaluate, or implement innovative approaches to meet the requirements of the Bank Secrecy Act.
“(4) Federal functional regulator defined.—In this subsection, the term ‘Federal functional regulator’ means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.”.

SEC. 302. INNOVATION LABS.

(a) In General.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“§ 5333. Innovation Labs

“(a) Establishment.—There is established within the Department of the Treasury and each Federal functional regulator an Innovation Lab.

“(b) Director.—The head of each Innovation Lab shall be a Director, to be appointed by the Secretary of the Treasury or the head of the Federal functional regulator, as applicable.

“(c) Duties.—The duties of the Innovation Lab shall be—

“(1) to provide outreach to law enforcement agencies, financial institutions, and other persons (including vendors and technology companies) with
respect to innovation and new technologies that may be used to comply with the requirements of the Bank Secrecy Act;

“(2) to support the implementation of responsible innovation and new technology, in a manner that complies with the requirements of the Bank Secrecy Act;

“(3) to explore opportunities for public-private partnerships; and

“(4) to develop metrics of success.

“(d) FINCEN Lab.—The Innovation Lab established under subsection (a) within the Department of the Treasury shall be a lab within the Financial Crimes Enforcement Network.

“(e) Federal Functional Regulator Defined.—In this subsection, the term ‘Federal functional regulator’ means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.”.

(b) Clerical Amendment.—The table of contents for subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“5333. Innovation Labs.”.
SEC. 303. INNOVATION COUNCIL.

(a) In General.—Subchapter II of chapter 53 of Title 31, United States Code, as amended by section 302, is further amended by adding at the end the following:

§ 5334. Innovation Council

(a) Establishment.—There is established the Innovation Council (hereinafter in this section referred to as the ‘Council’), which shall consist of each Director of an Innovation Lab established under section 5334 and the Director of the Financial Crimes Enforcement Network.

(b) Chair.—The Director of the Innovation Lab of the Department of the Treasury shall serve as the Chair of the Council.

(c) Duty.—The members of the Council shall coordinate on activities related to innovation under the Bank Secrecy Act, but may not supplant individual agency determinations on innovation.

(d) Meetings.—The meetings of the Council—

(1) shall be at the call of the Chair, but in no case may the Council meet less than semi-annually;

(2) may include open and closed sessions, as determined necessary by the Council; and

(3) shall include participation by public and private entities and law enforcement agencies.

(e) Report.—The Council shall issue an annual report, for each of the 7 years beginning on the date of en-
actment of this section, to the Secretary of the Treasury
on the activities of the Council during the previous year,
including the success of programs as measured by metrics
of success developed pursuant to section 5334(e)(4), and
any regulatory or legislative recommendations that the
Council may have.”.

(b) CLERICAL AMENDMENT.—The table of contents
for subchapter II of chapter 53 of title 31, United States
Code, is amended by adding the end the following:
“5334. Innovation Council.”.

SEC. 304. TESTING METHODS RULEMAKING.

(a) IN GENERAL.—Section 5318 of title 31, United
States Code, as amended by section 301, is further amend-
ed by adding at the end the following:
“(q) TESTING.—
“(1) IN GENERAL.—The Secretary of the
Treasury, in consultation with the head of each
agency to which the Secretary has delegated duties
or powers under subsection (a), shall issue a rule to
specify—
“(A) with respect to technology and related
technology-internal processes (‘new technology’) designed to facilitate compliance with the Bank
Secrecy Act requirements, the standards by
which financial institutions are to test new
technology; and
“(B) in what instances or under what circumstance and criteria a financial institution may replace or terminate legacy technology and processes for any examinable technology or process without the replacement or termination being determined an examination deficiency.

“(2) STANDARDS.—The standards described under paragraph (1) may include—

“(A) an emphasis on using innovative approaches, such as machine learning, rather than rules-based systems;

“(B) risk-based back-testing of the regime to facilitate calibration of relevant systems;

“(C) requirements for appropriate data privacy and security; and

“(D) a requirement that the algorithms used by the regime be disclosed to the Financial Crimes Enforcement Network, upon request.

“(3) CONFIDENTIALITY OF ALGORITHMS.—If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this subsection or any other authority, discloses the institution’s algorithms to a Government agency, such algorithms and any materials associated with the creation of such algorithms
shall be considered confidential and not subject to
public disclosure.”.

(b) UPDATE OF MANUAL.—The Financial Institu-
tions Examination Council shall ensure—

(1) that any manual prepared by the Council is
updated to reflect the rulemaking required by the
amendment made by subsection (a); and

(2) that financial institutions are not penalized
for the decisions based on such rulemaking to re-
place or terminate technology used for compliance
with the Bank Secrecy Act (as defined under section
5312 of title 31, United States Code) or other anti-
money laundering laws.

SEC. 305. FINCEN STUDY ON USE OF EMERGING TECH-
NOLOGIES.

(a) Study.—

(1) IN GENERAL.—The Director of the Finan-
cial Crimes Enforcement Network (‘‘FinCEN’’) shall
carry out a study on—

(A) the status of implementation and in-
ternal use of emerging technologies, including
artificial intelligence (‘‘AI’’), digital identity
technologies, blockchain technologies, and other
innovative technologies within FinCEN;
(B) whether AI, digital identity technologies, blockchain technologies, and other innovative technologies can be further leveraged to make FinCEN’s data analysis more efficient and effective; and

(C) how FinCEN could better utilize AI, digital identity technologies, blockchain technologies, and other innovative technologies to more actively analyze and disseminate the information it collects and stores to provide investigative leads to Federal, State, Tribal, and local law enforcement, and other Federal agencies (collective, “Agencies”), and better support its ongoing investigations when referring a case to the Agencies.

(2) Inclusion of GTO Data.—The study required under this subsection shall include data collected through the Geographic Targeting Orders (“GTO”) program.

(3) Consultation.—In conducting the study required under this subsection, FinCEN shall consult with the Directors of the Innovations Labs established in section 302.

(b) Report.—Not later than the end of the 6-month period beginning on the date of the enactment of this Act,
the Director shall issue a report to the Committee on
Banking, Housing, and Urban Affairs of the Senate and
the Committee on Financial Services of the House of Rep-
resentatives containing—

(1) all findings and determinations made in car-
yring out the study required under subsection (a);

(2) with respect to each of subparagraphs (A),
(B) and (C) of subsection (a)(1), any best practices
or significant concerns identified by the Director,
and their applicability to AI, digital identity tech-
nologies, blockchain technologies, and other innova-
tive technologies with respect to U.S. efforts to com-
batt money laundering and other forms of illicit fi-
nance; and

(3) any policy recommendations that could fa-
cilitate and improve communication and coordination
between the private sector, FinCEN, and Agencies
through the implementation of innovative ap-
proaches, in order to meet their Bank Secrecy Act
(as defined under section 5312 of title 31, United
States Code) and anti-money laundering compliance
obligations.

SEC. 306. DISCRETIONARY SURPLUS FUNDS.

(a) IN GENERAL.—Section 7(a)(3)(A) of the Federal
Reserve Act (12 U.S.C. 289(a)(3)(A)) is amended by
striking “$6,825,000,000” and inserting “$6,798,000,000”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on September 30, 2029.

Passed the House of Representatives October 22, 2019.

Attest: CHERYL L. JOHNSON,

Clerk.
Item B-2
TO: City Council Liaison/Legislative/Lobby Committee  
FROM: Cynthia Owens, Policy and Management Analyst  
DATE: July 10, 2020  
SUBJECT: H.R.7120 - George Floyd Justice in Policing Act of 2020  
ATTACHMENTS: 1. Summary Memo – H.R. 7120  
2. Fact Sheet – H.R. 7120  
3. H.R. 7120 Section by Section Summary  
4. Bill Text – H.R. 7120

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

H.R.7120 - George Floyd Law Justice in Policing Act of 2020 (H.R. 7120) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s federal lobbyist, David Turch & Associates, provided a summary memo for H.R. 7120 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of H.R. 7120, the Liaisons may recommend the following actions:

1) Support H.R. 7120;  
2) Support if amended H.R. 7120;  
3) Oppose H.R. 7120;  
4) Oppose unless amended H.R. 7120;  
5) Remain neutral; or  
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on H.R. 7120, then staff will place the item on a future City Council Agenda for concurrence.
To: Cindy Owens, Policy and Management Analyst  
City of Beverly Hills

From: Jamie Jones  
Jamie.jones@davidturch.com  
202-543-3744

Date: July 2, 2020

Re: H.R. 7120 – the George Floyd Justice in Policing Act of 2020

On June 25, the House of Representatives adopted H.R. 7120, the George Floyd Justice in Policing Act, by a party-line vote of 236-181. Every House Democrat voted for the measure with only three Republicans joining them, defying a White House call to action against the bill.

H.R. 7120 would crack down on excessive police force and ban chokeholds, enforce national transparency standards, demilitarize the police and push accountability for officer misconduct with a national database to track offenses. The legislation lowers the criminal intent standard—from willful to knowing or reckless—to convict a law enforcement officer for misconduct in a federal prosecution; it limits qualified immunity as a defense to liability in a private civil action against a police officer or state correctional officer, and authorizes the Department of Justice to issue subpoenas in investigations of police departments for a pattern or practice of discrimination. The House bill, sponsored by the Congressional Black Caucus, garnered an array of endorsements from national advocacy groups including the NAACP, the AFL-CIO and the American College of Physicians. The bill was also endorsed by the parents of African Americans killed by police.

On the Senate side, Majority Leader Mitch McConnell failed to secure enough votes to pass a procedural motion on a Republican justice reform bill sponsored by Senator Tim Scott of South Carolina. Senate Democrats lead by Minority Leader Chuck Schumer (D-NY) opposed the GOP measure, thereby ensuring a motion requiring a supermajority vote to proceed to floor debate failed. Senate and House Democrats criticized the Republican plan as a “sham,” lacking any substance in addressing the police reforms demanded by protesters and advocacy groups across the nation. Following McConnell’s failed bid to bring the Republican bill to the floor, the majority leader said point blank that he would not consider the House-passed measure, leaving Congress in a stalemate on one of the most pressing issues facing the nation.

Below please find a more detailed summary of the George Floyd Justice in Policing Act of 2020:

- Prohibits federal, state, and local law enforcement from racial, religious and discriminatory profiling, and mandates training on racial, religious, and discriminatory profiling for all law enforcement.

- Bans chokeholds, carotid holds and no-knock warrants at the federal level and limits the transfer of military-grade equipment to state and local law enforcement.
• Mandates the use of dashboard cameras and body cameras for federal offices and requires state and local law enforcement to use existing federal funds to ensure the use of police body cameras.

• Establishes a National Police Misconduct Registry to prevent problematic officers who are fired or leave on agency from moving to another jurisdiction without any accountability.

• Amends federal criminal statute from “willfulness” to a “recklessness” standard to successfully identify and prosecute police misconduct.

• Reforms qualified immunity so that individuals are not barred from recovering damages when police violate their constitutional rights.

• Establishes public safety innovation grants for community-based organizations to create local commissions and task forces to help communities to re-imagine and develop concrete, just and equitable public safety approaches.

• Creates law enforcement development and training programs to develop best practices and requires the creation of law enforcement accreditation standard recommendations based on President Obama’s Taskforce on 21st Century policing.

• Requires state and local law enforcement agencies to report use of force data, disaggregated by race, sex, disability, religion, age.

• Improves the use of pattern and practice investigations at the federal level by granting the Department of Justice Civil Rights Division subpoena power and creates a grant program for state attorneys general to develop authority to conduct independent investigations into problematic police departments.

• Establishes a Department of Justice task force to coordinate the investigation, prosecution and enforcement efforts of federal, state and local governments in cases related to law enforcement misconduct.
FACT SHEET: JUSTICE IN POLICING ACT OF 2020

The Justice in Policing Act is the first-ever bold, comprehensive approach to hold police accountable, end racial profiling, change the culture of law enforcement, empower our communities, and build trust between law enforcement and our communities by addressing systemic racism and bias to help save lives. The Justice in Policing Act would: 1) establish a national standard for the operation of police departments; 2) mandate data collection on police encounters; 3) reprogram existing funds to invest in transformative community-based policing programs; and 4) streamline federal law to prosecute excessive force and establish independent prosecutors for police investigations.

The Justice in Policing Act of 2020 will:

Work to End Racial & Religious Profiling

- Prohibits federal, state, and local law enforcement from racial, religious and discriminatory profiling.
- Mandates training on racial, religious, and discriminatory profiling for all law enforcement.
- Requires law enforcement to collect data on all investigatory activities.

Save Lives by Banning Chokeholds & No-Knock Warrants

- Bans chokeholds and carotid holds at the federal level and conditions law enforcement funding for state and local governments banning chokeholds.
- Bans no-knock warrants in drug cases at the federal level and conditions law enforcement funding for state and local governments banning no-knock warrants at the local and state level.
- Requires that deadly force be used only as a last resort and requires officers to employ de-escalation techniques first. Changes the standard to evaluate whether law enforcement use of force was justified from whether the force was “reasonable” to whether the force was “necessary.” Condition grants on state and local law enforcement agencies’ establishing the same use of force standard.

Limit Military Equipment on American Streets & Requires Body Cameras

- Limits the transfer of military-grade equipment to state and local law enforcement.
- Requires federal uniformed police officers to wear body cameras and requires state and local law enforcement to use existing federal funds to ensure the use of police body cameras.
- Requires marked federal police vehicles to have dashboard cameras.

Hold Police Accountable in Court
• Makes it easier to prosecute offending officers by amending the federal criminal statute to prosecute police misconduct. The mens rea requirement in 18 U.S.C. Section 242 will be amended from “willfulness” to a “recklessness” standard.

• Enables individuals to recover damages in civil court when law enforcement officers violate their constitutional rights by eliminating qualified immunity for law enforcement.

Investigate Police Misconduct

• Improves the use of pattern and practice investigations at the federal level by granting the Department of Justice Civil Rights Division subpoena power and creates a grant program for state attorneys general to develop authority to conduct independent investigations into problematic police departments.

Empower Our Communities to Reimagine Public Safety in an Equitable and Just Way

• This bill reinvests in our communities by supporting critical community-based programs to change the culture of law enforcement and empower our communities to reimagine public safety in an equitable and just way.

• It establishes public safety innovation grants for community-based organizations to create local commissions and task forces to help communities to re-imagine and develop concrete, just and equitable public safety approaches. These local commissions would operate similar to President Obama’s Task Force on 21st Century Policing.

Change the Culture of Law Enforcement with Training to Build Integrity and Trust

• Requires the creation of law enforcement accreditation standard recommendations based on President Obama’s Taskforce on 21st Century policing.

• Creates law enforcement development and training programs to develop best practices.

• Studies the impact of laws or rules that allow a law enforcement officer to delay answers to questions posed by investigators of law enforcement misconduct.

• Enhances funding for pattern and practice discrimination investigations and programs managed by the DOJ Community Relations Service.

• Requires the Attorney General to collect data on investigatory actions and detentions by federal law enforcement agencies; the racial distribution of drug charges; the use of deadly force by and against law enforcement officers; as well as traffic and pedestrian stops and detentions.

• Establishes a DOJ task force to coordinate the investigation, prosecution and enforcement efforts of federal, state and local governments in cases related to law enforcement misconduct.

Improve Transparency by Collecting Data on Police Misconduct and Use-of-Force

• Creates a nationwide police misconduct registry to prevent problematic officers who are fired or leave one agency, from moving to another jurisdiction without any accountability.

• Mandates state and local law enforcement agencies to report use of force data, disaggregated by race, sex, disability, religion, age.

Make Lynching a Federal Crime

• Makes it a federal crime to conspire to violate existing federal hate crimes laws.
Attachment 3
TITLE I. POLICE ACCOUNTABILITY


The problem:
- The current *mens rea* standard of “willfulness” has made it extremely difficult to prosecute law enforcement officers

The bill would:
- Change “willful” to “knowingly or with reckless disregard”
- Define a “death resulting” as any act that was a “substantial factor contributing to the death”

Section 102 – Qualified Immunity Reform

The problem:
- Courts have interpreted qualified immunity to bar individuals from recovering damages when law enforcement officers have violated their constitutional rights

The bill would:
- Modify Section 1983 to enable individuals to recover damages when law enforcement officers violate their constitutional rights

Section 103 – Pattern and Practice Investigations

The problem:
- The Department of Justice, Civil Rights Division’s ability to conduct pattern and practice investigations into discriminatory and unconstitutional policing practices has been undermined by the Trump Administration

The bill would:
- Grant subpoena power to the U.S. Department of Justice, Civil Rights Division, to conduct pattern and practice investigations
- Provide grants to state attorneys’ general to conduct pattern and practice investigations

Section 104 – Independent Investigations

The problem:
• State and local law enforcement agencies have historically failed to hold law enforcement officers accountable for misconduct and excessive use of force

The bill would:
• Create a grant program for state attorneys’ general to create an independent investigation process for law enforcement misconduct or excessive use of force

Section 105 – Law Enforcement Trust and Integrity Act

The problem: Police departments lack uniform standards to ensure adherence to best practices and community accountability.

The bill would:
• Require the attorney general to create law enforcement accreditation standard recommendations based on President Obama’s Taskforce on 21st Century policing
• Create law enforcement development programs to develop policing best practices
• Study the impact of any law, rule or procedure that allows a law enforcement officer to delay for an unreasonable or arbitrary period of time the answer to questions posed by investigators of law enforcement misconduct.
• Enhances funding for pattern and practice discrimination described in section 210401 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C.A. 14141); and programs managed by the DOJ Community Relations Service.
• Require the Attorney General to collect data on the following: A) Investigatory actions and detentions by federal law enforcement agencies; B) The racial distribution of drug charges; C) The use of deadly force by and against law enforcement officers; D) Traffic and pedestrian stops and detentions.
• Establish a DOJ task force to coordinate the investigation, prosecution and enforcement efforts of federal, state and local governments in cases related to law enforcement misconduct.

TITLE II: POLICING TRANSPARENCY THROUGH DATA

Subtitle A – Establishment of a National Police Misconduct Registry

The problem:
• Too often, problematic officers leave (or are fired by) one agency, and then move to another jurisdiction without any accountability.

The bill would:
• Create a federal registry of all federal, state and local law enforcement officers that compiles
  o Misconduct Complaints (Pending, Sustained and Exonerated)
  o Discipline records
  o Termination records
  o Records of certification
• Mandates that law enforcement agencies ensure that all officers hired are certified within the state

Subtitle B – Police Reporting Information Data and Evidence Act

The bill would:
• Require States to report to the Justice Department any incident where use of force is used against a civilian or against a law enforcement officer
• The reports must include, for example, the following:
  o The national origin, sex, race, ethnicity, age, disability, English language proficiency, and housing status of each civilian against whom a law enforcement officer used force
  o The reason force was used
• Provide technical assistance grants to law enforcement agencies that employ less than 100 people to help comply with the requirements of the bill

TITLE III. IMPROVING POLICE TRAINING AND POLICES

Subtitle A – End Racial and Religious Profiling Act

The Problem:
• Blacks are 3.6 times more likely to be arrested for selling drugs, despite the fact that whites are more likely to sell drugs
• Blacks are 2.5 times more likely to be arrested for possessing drugs, despite using drugs at the same rate as whites

The bill would:
• Prohibit federal, state, and local law enforcement from racial, religious and discriminatory profiling and create a cause of action for declaratory or injunctive relief
• Mandate law enforcement provide training on racial, religious, and discriminatory profiling
• Require law enforcement to collect data on all investigatory activities and submit collected data to the Department of Justice using a standardized form
• Condition federal funding to state and local law enforcement to adopt policies to combat racial, religious, and discriminatory profiling
• Condition federal funding to state and local law enforcement to establish best practices to discourage profiling
• Require the Attorney General to provide reports on racial, religious, and discriminatory profiling and ongoing efforts to combat profiling
Section 361 – Training on Racial Bias and Duty to Intervene

The bill would:
- Establish a training program to cover racial bias, implicit bias, procedural justice, and the duty to intervene
- Mandate training at the federal level
- Condition federal funding on establishing training at the state and local level

Section 362 – Ban on No-Knock Warrants in Drug Cases

The bill would:
- Ban no-knock warrants in drug cases at the federal level
- Condition law enforcement funding for state and local law enforcement agencies on prohibiting the use of no-knock warrants in drug cases

Section 363 – Ban on Chokeholds and Carotid Holds

The bill would:
- Ban the use of chokeholds and carotid holds
- Condition law enforcement funding for state and local law enforcement agencies on establishing a law to prohibit the use of chokeholds and carotid holds

Section 364 – Police Exercising Absolute Care with Everyone Act (“PEACE Act”)

The bill would:
- Change the use of force standard for federal officers from reasonableness to only when necessary to prevent death or serious bodily injury.
- Require that deadly force be used only as a last resort, and require officers to employ de-escalation techniques.
- Condition grants on state and local law enforcement agencies’ establishing the same use of force standard

Section 365 – Stop Militarizing Law Enforcement Act

The bill would:
- Limit the transfer of military-grade equipment to state and local law enforcement

Subtitle C – Part I – Federal Police Camera and Accountability Act

The bill would:
- Requires federal uniformed police officers to wear body cameras and marked federal police vehicles to have dashboard cameras. This would also commission a GAO study on federal police officer’s training, vehicle pursuits, and use of force interactions with the public.
Subtitle C – Part II – Police Camera Act
The bill would:

- Require state and local law enforcement to use existing federal funds to ensure the use of police body cameras.

TITLE IV. JUSTICE FOR VICTIMS OF LYNCHING ACT

- The bill would make it a federal crime to conspire to violate existing hate crimes laws.
Attachment 4
AN ACT

To hold law enforcement accountable for misconduct in court, improve transparency through data collection, and reform police training and policies.

1  Be it enacted by the Senate and House of Representa-
2  tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “George Floyd Justice in Policing Act of 2020”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec.  1. Short title; table of contents.
Sec.  2. Definitions.

TITLE I—POLICE ACCOUNTABILITY

Subtitle A—Holding Police Accountable in the Courts

Sec. 101. Deprivation of rights under color of law.
Sec. 102. Qualified immunity reform.
Sec. 103. Pattern and practice investigations.
Sec. 104. Independent investigations.

Subtitle B—Law Enforcement Trust and Integrity Act

Sec. 111. Short title.
Sec. 112. Definitions.
Sec. 113. Accreditation of law enforcement agencies.
Sec. 114. Law enforcement grants.
Sec. 115. Attorney General to conduct study.
Sec. 117. National task force on law enforcement oversight.
Sec. 118. Federal data collection on law enforcement practices.

TITLE II—POLICING TRANSPARENCY THROUGH DATA

Subtitle A—National Police Misconduct Registry

Sec. 201. Establishment of National Police Misconduct Registry.
Sec. 202. Certification requirements for hiring of law enforcement officers.

Subtitle B—PRIDE Act

Sec. 221. Short title.
Sec. 222. Definitions.
Sec. 223. Use of force reporting.
Sec. 224. Use of force data reporting.
Sec. 225. Compliance with reporting requirements.
Sec. 226. Federal law enforcement reporting.
Sec. 227. Authorization of appropriations.

TITLE III—IMPROVING POLICE TRAINING AND POLICIES

Subtitle A—End Racial and Religious Profiling Act

Sec. 301. Short title.
Sec. 302. Definitions.

PART I—PROHIBITION OF RACIAL PROFILING

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PART II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AGENCIES

Sec. 321. Policies to eliminate racial profiling.

PART III—PROGRAMS TO ELIMINATE RACIAL PROFILING BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES

Sec. 331. Policies required for grants.
Sec. 332. Involvement of Attorney General.
Sec. 333. Data collection demonstration project.
Sec. 334. Development of best practices.
Sec. 335. Authorization of appropriations.

PART IV—DATA COLLECTION

Sec. 341. Attorney General to issue regulations.
Sec. 342. Publication of data.
Sec. 343. Limitations on publication of data.

PART V—DEPARTMENT OF JUSTICE REGULATIONS AND REPORTS ON RACIAL PROFILING IN THE UNITED STATES

Sec. 351. Attorney General to issue regulations and reports.

Subtitle B—Additional Reforms

Sec. 361. Training on racial bias and duty to intervene.
Sec. 362. Ban on no-knock warrants in drug cases.
Sec. 363. Incentivizing banning of chokeholds and carotid holds.
Sec. 364. PEACE Act.
Sec. 365. Stop Militarizing Law Enforcement Act.
Sec. 366. Public safety innovation grants.

Subtitle C—Law Enforcement Body Cameras

PART 1—FEDERAL POLICE CAMERA AND ACCOUNTABILITY ACT

Sec. 371. Short title.
Sec. 372. Requirements for Federal law enforcement officers regarding the use of body cameras.
Sec. 373. Patrol vehicles with in-car video recording cameras.
Sec. 374. Facial recognition technology.
Sec. 375. GAO study.
Sec. 376. Regulations.
Sec. 377. Rule of construction.

PART 2—POLICE CAMERA ACT

Sec. 381. Short title.
Sec. 382. Law enforcement body-worn camera requirements.

TITLE IV—CLOSING THE LAW ENFORCEMENT CONSENT LOOPHOLE

Sec. 401. Short title.

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Sec. 402. Prohibition on engaging in sexual acts while acting under color of law.
Sec. 403. Enactment of laws penalizing engaging in sexual acts while acting under color of law.
Sec. 404. Reports to Congress.
Sec. 405. Definition.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Severability.
Sec. 502. Savings clause.

1 SEC. 2. DEFINITIONS.

In this Act:

(1) **Byrne Grant Program.**—The term “Byrne grant program” means any grant program under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.), without regard to whether the funds are characterized as being made available under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Local Government Law Enforcement Block Grants Program, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise.

(2) **COPS Grant Program.**—The term “COPS grant program” means the grant program authorized under section 1701 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10381).

(3) **Federal Law Enforcement Agency.**—The term “Federal law enforcement agency” means
any agency of the United States authorized to en-

(4) Federal law enforcement officer.—
The term "Federal law enforcement officer" has the
meaning given the term in section 115 of title 18,
United States Code.

(5) Indian tribe.—The term "Indian Tribe" has the meaning given the term "Indian tribe" in section 901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10251).

(6) Local law enforcement officer.—The term "local law enforcement officer" means any officer, agent, or employee of a State or unit of local government authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law.

(7) State.—The term "State" has the meaning given the term in section 901 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10251).

(8) Tribal law enforcement officer.—
The term "tribal law enforcement officer" means
any officer, agent, or employee of an Indian tribe, or
the Bureau of Indian Affairs, authorized by law or
by a government agency to engage in or supervise
the prevention, detection, or investigation of any vi-
olation of criminal law.

(9) Unit of Local Government.—The term
“unit of local government” has the meaning given
the term in section 901 of title I of the Omnibus
Crime Control and Safe Streets Act of 1968 (34

(10) Deadly Force.—The term “deadly
force” means that force which a reasonable person
would consider likely to cause death or serious bodily
harm, including—

(A) the discharge of a firearm;

(B) a maneuver that restricts blood or oxy-
gen flow to the brain, including chokeholds,
strangleholds, neck restraints, neckholds, and
carotid artery restraints; and

(C) multiple discharges of an electronic
control weapon.

(11) Use of Force.—The term “use of force”
includes—

(A) the use of a firearm, electronic control
weapon, explosive device, chemical agent (such
as pepper spray), baton, impact projectile, blunt instrument, hand, fist, foot, canine, or vehicle against an individual;

(B) the use of a weapon, including a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy device, or firearm, against an individual; or

(C) any intentional pointing of a firearm at an individual.

(12) LESS LETHAL FORCE.—The term “less lethal force” means any degree of force that is not likely to cause death or serious bodily injury.

(13) FACIAL RECOGNITION.—The term “facial recognition” means an automated or semiautomated process that analyzes biometric data of an individual from video footage to identify or assist in identifying an individual.

TITLE I—POLICE ACCOUNTABILITY
Subtitle A—Holding Police Accountable in the Courts

SEC. 101. DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.
Section 242 of title 18, United States Code, is amended—
(1) by striking "willfully" and inserting "knowingly or recklessly";

(2) by striking "or may be sentenced to death"; and

(3) by adding at the end the following: "For purposes of this section, an act shall be considered to have resulted in death if the act was a substantial factor contributing to the death of the person."

SEC. 102. QUALIFIED IMMUNITY REFORM.

Section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended by adding at the end the following: "It shall not be a defense or immunity in any action brought under this section against a local law enforcement officer (as such term is defined in section 2 of the George Floyd Justice in Policing Act of 2020), or in any action under any source of law against a Federal investigative or law enforcement officer (as such term is defined in section 2680(h) of title 28, United States Code), that—

"(1) the defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that his or her conduct was lawful at the time when the conduct was committed; or

"(2) the rights, privileges, or immunities secured by the Constitution and laws were not clearly
established at the time of their deprivation by the
defendant, or that at such time, the state of the law
was otherwise such that the defendant could not rea-
sonably have been expected to know whether his or
her conduct was lawful.”

6 SEC. 103. PATTERN AND PRACTICE INVESTIGATIONS.

(a) SUBPOENA AUTHORITY.—Section 210401 of the
Violent Crime Control and Law Enforcement Act of 1994
(34 U.S.C. 12601) is amended—

(1) in subsection (a), by inserting “, by pros-
ecutors,” after “conduct by law enforcement offi-
cers”;

(2) in subsection (b), by striking “paragraph
(1)” and inserting “subsection (a)”;

(3) by adding at the end the following:

“(c) SUBPOENA AUTHORITY.—In carrying out the
authority in subsection (b), the Attorney General may re-
quire by subpoena the production of all information, docu-
ments, reports, answers, records, accounts, papers, and
other data in any medium (including electronically stored
information), as well as any tangible thing and documen-
tary evidence, and the attendance and testimony of wit-
nesses necessary in the performance of the Attorney Gen-
eral under subsection (b). Such a subpoena, in the case
of contumacy or refusal to obey, shall be enforceable by
order of any appropriate district court of the United States.

“(d) **Civil Action by State Attorneys General.**—Whenever it shall appear to the attorney general of any State, or such other official as a State may designate, that a violation of subsection (a) has occurred within their State, the State attorney general or official, in the name of the State, may bring a civil action in the appropriate district court of the United States to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice. In carrying out the authority in this subsection, the State attorney general or official shall have the same subpoena authority as is available to the Attorney General under subsection (c).

“(e) **Rule of Construction.**—Nothing in this section may be construed to limit the authority of the Attorney General under subsection (b) in any case in which a State attorney general has brought a civil action under subsection (d).

“(f) **Reporting Requirements.**—On the date that is one year after the enactment of the George Floyd Justice in Policing Act of 2020, and annually thereafter, the Civil Rights Division of the Department of Justice shall make publicly available on an internet website a report on, during the previous year—
“(1) the number of preliminary investigations of violations of subsection (a) that were commenced;

“(2) the number of preliminary investigations of violations of subsection (a) that were resolved; and

“(3) the status of any pending investigations of violations of subsection (a).”.

(b) Grant Program.—

(1) Grants Authorized.—The Attorney General may award a grant to a State to assist the State in conducting pattern and practice investigations under section 210401(d) of the Violent Crime Control and Law Enforcement Act of 1994 (34 U.S.C. 12601).

(2) Application.—A State seeking a grant under paragraph (1) shall submit an application in such form, at such time, and containing such information as the Attorney General may require.

(3) Funding.—There are authorized to be appropriated $100,000,000 to the Attorney General for each of fiscal years 2021 through 2023 to carry out this subsection.

(e) Data on Excessive Use of Force.—Section 210402 of the Violent Crime Control and Law Enforcement Act of 1994 (34 U.S.C. 12602) is amended—
(1) in subsection (a)—

(A) by striking “The Attorney General”

and inserting the following:

“(1) **FEDERAL COLLECTION OF DATA.**—The Attorney General”; and

(B) by adding at the end the following:

“(2) **STATE COLLECTION OF DATA.**—The attorney general of a State may, through appropriate means, acquire data about the use of excessive force by law enforcement officers and such data may be used by the attorney general in conducting investigations under section 210401. This data may not contain any information that may reveal the identity of the victim or any law enforcement officer.”; and

(2) by amending subsection (b) to read as follows:

“(b) **LIMITATION ON USE OF DATA ACQUIRED BY THE ATTORNEY GENERAL.**—Data acquired under subsection (a)(1) shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of the victim or any law enforcement officer.”.

(d) **ENFORCEMENT OF PATTERN OR PRACTICE RELIEF.**—Beginning in the first fiscal year that begins after the date that is one year after the date of enactment of
this Act, a State or unit of local government that receives
funds under the Byrne grant program or the COPS grant
program during a fiscal year may not make available any
amount of such funds to a local law enforcement agency
if that local law enforcement agency enters into or renews
any contractual arrangement, including a collective bar-
gaining agreement with a labor organization, that—

(1) would prevent the Attorney General from
seeking or enforcing equitable or declaratory relief
against a law enforcement agency engaging in a pat-
tern or practice of unconstitutional misconduct; or

(2) conflicts with any terms or conditions con-
tained in a consent decree.

SEC. 104. INDEPENDENT INVESTIGATIONS.

(a) IN GENERAL.—

(1) DEFINITIONS.—In this subsection:

(A) INDEPENDENT INVESTIGATION.—The
term “independent investigation” means a
criminal investigation or prosecution of a law
enforcement officer’s use of deadly force, in-
cluding one or more of the following:

(i) Using an agency or civilian review
board that investigates and independently
reviews all allegations of use of deadly
force made against law enforcement officers in the jurisdiction.

(ii) Assigning of the attorney general of the State in which the alleged use of deadly force was committed to conduct the criminal investigation and prosecution.

(iii) Adopting a procedure under which an independent prosecutor is assigned to investigate and prosecute the case, including a procedure under which an automatic referral is made to an independent prosecutor appointed and overseen by the attorney general of the State in which the alleged use of deadly force was committed.

(iv) Adopting a procedure under which an independent prosecutor is assigned to investigate and prosecute the case.

(v) Having law enforcement agencies agree to and implement memoranda of understanding with other law enforcement agencies under which the other law enforcement agencies—
(I) shall conduct the criminal investigation into the alleged use of deadly force; and

(II) upon conclusion of the criminal investigation, shall file a report with the attorney general of the State containing a determination regarding whether—

(aa) the use of deadly force was appropriate; and

(bb) any action should be taken by the attorney general of the State.

(vi) Any substantially similar procedure to ensure impartiality in the investigation or prosecution.

(B) INDEPENDENT INVESTIGATION OF LAW ENFORCEMENT STATUTE.—The term "independent investigation of law enforcement statute" means a statute requiring an independent investigation in a criminal matter in which—

(i) one or more of the possible defendants is a law enforcement officer;
(ii) one or more of the alleged offenses involves the law enforcement officer's use of deadly force in the course of carrying out that officer's duty; and

(iii) the non-Federal law enforcement officer's use of deadly force resulted in a death or injury.

(C) **INDEPENDENT PROSECUTOR.**—The term "independent prosecutor" means, with respect to a criminal investigation or prosecution of a law enforcement officer's use of deadly force, a prosecutor who—

(i) does not oversee or regularly rely on the law enforcement agency by which the law enforcement officer under investigation is employed; and

(ii) would not be involved in the prosecution in the ordinary course of that prosecutor's duties.

(2) **GRANT PROGRAM.**—The Attorney General may award grants to eligible States and Indian Tribes to assist in implementing an independent investigation of law enforcement statute.

(3) **ELIGIBILITY.**—To be eligible for a grant under this subsection, a State or Indian Tribe shall
have in effect an independent investigation of law
enforcement statute.

(4) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated to the At-
torney General $750,000,000 for fiscal years 2021
through 2023 to carry out this subsection.

(b) COPS GRANT PROGRAM USED FOR CIVILIAN RE-
VIEW BOARDS.—Part Q of title I of the of the Omnibus
10381 et seq.) is amended—

(1) in section 1701(b) (34 U.S.C. 10381(b))—

(A) by redesignating paragraphs (22) and

(23) as paragraphs (23) and (24), respectively;

(B) in paragraph (23), as so redesignated,
by striking “(21)” and inserting “(22)”;

(C) by inserting after paragraph (21) the
following:

“(22) to develop best practices for and to create
civilian review boards;”; and

(2) in section 1709 (34 U.S.C. 10389), by add-
ing at the end the following:

“(8) ‘civillian review board’ means an adminis-
trative entity that investigates civilian complaints
against law enforcement officers and—
“(A) is independent and adequately funded;

“(B) has investigatory authority and subpoena power;

“(C) has representative community diversity;

“(D) has policy making authority;

“(E) provides advocates for civilian complainants;

“(F) may conduct hearings; and

“(G) conducts statistical studies on prevailing complaint trends.”.

Subtitle B—Law Enforcement

Trust and Integrity Act

SEC. 111. SHORT TITLE.

This subtitle may be cited as the “Law Enforcement Trust and Integrity Act of 2020”.

SEC. 112. DEFINITIONS.

In this subtitle:

(1) COMMUNITY-BASED ORGANIZATION.—The term “community-based organization” means a grassroots organization that monitors the issue of police misconduct and that has a local or national presence and membership, such as the National Association for the Advancement of Colored People
(NAACP), the American Civil Liberties Union (ACLU), UnidosUS, the National Urban League, the National Congress of American Indians, or the National Asian Pacific American Legal Consortium (NAPALC).

(2) LAW ENFORCEMENT ACCREDITATION ORGANIZATION.—The term “law enforcement accreditation organization” means a professional law enforcement organization involved in the development of standards of accreditation for law enforcement agencies at the national, State, regional, or Tribal level, such as the Commission on Accreditation for Law Enforcement Agencies (CALEA).

(3) LAW ENFORCEMENT AGENCY.—The term “law enforcement agency” means a State, local, Indian tribal, or campus public agency engaged in the prevention, detection, investigation, prosecution, or adjudication of violations of criminal laws.

(4) PROFESSIONAL LAW ENFORCEMENT ASSOCIATION.—The term “professional law enforcement association” means a law enforcement membership association that works for the needs of Federal, State, local, or Indian tribal law enforcement agencies and with the civilian community on matters of common interest, such as the Hispanic American
Police Command Officers Association (HAPCOA), the National Asian Pacific Officers Association (NAPOA), the National Black Police Association (NBPA), the National Latino Peace Officers Association (NLPOA), the National Organization of Black Law Enforcement Executives (NOBLE), Women in Law Enforcement, the Native American Law Enforcement Association (NALEA), the International Association of Chiefs of Police (IACP), the National Sheriffs’ Association (NSA), the Fraternal Order of Police (FOP), or the National Association of School Resource Officers.

(5) Professional civilian oversight organization.—The term “professional civilian oversight organization” means a membership organization formed to address and advance civilian oversight of law enforcement and whose members are from Federal, State, regional, local, or Tribal organizations that review issues or complaints against law enforcement agencies or officers, such as the National Association for Civilian Oversight of Law Enforcement (NACOLE).

SEC. 113. ACCREDITATION OF LAW ENFORCEMENT AGENCIES.

(a) STANDARDS.—
(1) **INITIAL ANALYSIS.**—The Attorney General shall perform an initial analysis of existing accreditation standards and methodology developed by law enforcement accreditation organizations nationwide, including national, State, regional, and Tribal accreditation organizations. Such an analysis shall include a review of the recommendations of the Final Report of the President’s Taskforce on 21st Century Policing, issued by the Department of Justice, in May 2015.

(2) **DEVELOPMENT OF UNIFORM STANDARDS.**—

After completion of the initial review and analysis under paragraph (1), the Attorney General shall—

(A) recommend, in consultation with law enforcement accreditation organizations and community-based organizations, the adoption of additional standards that will result in greater community accountability of law enforcement agencies and an increased focus on policing with a guardian mentality, including standards relating to—

(i) early warning systems and related intervention programs;

(ii) use of force procedures;

(iii) civilian review procedures;
(iv) traffic and pedestrian stop and
search procedures;
(v) data collection and transparency;
(vi) administrative due process re-
quirements;
(vii) video monitoring technology;
(viii) youth justice and school safety;
and
(ix) recruitment, hiring, and training;
and
(B) recommend additional areas for the
development of national standards for the ac-
creditation of law enforcement agencies in con-
sultation with existing law enforcement accredi-
tation organizations, professional law enforce-
ment associations, labor organizations, commu-
nity-based organizations, and professional civil-
ian oversight organizations.

(3) CONTINUING ACCREDITATION PROCESS.—
The Attorney General shall adopt policies and proce-
dures to partner with law enforcement accreditation
organizations, professional law enforcement associ-
ations, labor organizations, community-based organi-
izations, and professional civilian oversight organiza-
tions to—
(A) continue the development of further accreditation standards consistent with paragraph (2); and

(B) encourage the pursuit of accreditation of Federal, State, local, and Tribal law enforcement agencies by certified law enforcement accreditation organizations.

(b) USE OF FUNDS REQUIREMENTS.—Section 502(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10153(a)) is amended by adding at the end the following:

"(7) An assurance that, for each fiscal year covered by an application, the applicant will use not less than 5 percent of the total amount of the grant award for the fiscal year to assist law enforcement agencies of the applicant, including campus public safety departments, gain or maintain accreditation from certified law enforcement accreditation organizations in accordance with section 113 of the Law Enforcement Trust and Integrity Act of 2020."

(c) ELIGIBILITY FOR CERTAIN GRANT FUNDS.—The Attorney General shall, as appropriate and consistent with applicable law, allocate Department of Justice discretionary grant funding only to States or units of local government that require law enforcement agencies of that
1 State or unit of local government to gain and maintain
2 accreditation from certified law enforcement accreditation
3 organizations in accordance with this section.
4 **SEC. 114. LAW ENFORCEMENT GRANTS.**
5 (a) **USE OF FUNDS REQUIREMENT.**—Section 502(a)
6 of title I of the Omnibus Crime Control and Safe Streets
7 Act of 1968 (34 U.S.C. 10153(a)), as amended by section
8 113, is amended by adding at the end the following:
9 “(8) An assurance that, for each fiscal year
10 covered by an application, the applicant will use not
11 less than 5 percent of the total amount of the grant
12 award for the fiscal year to study and implement ef-
13 fective management, training, recruiting, hiring, and
14 oversight standards and programs to promote effec-
15 tive community and problem solving strategies for
16 law enforcement agencies in accordance with section
17 114 of the Law Enforcement Trust and Integrity
18 Act of 2020.”.
19 (b) **GRANT PROGRAM FOR COMMUNITY ORGANIZA-
20 TIONS.**—The Attorney General may make grants to com-
21 munity-based organizations to study and implement—
22 (1) effective management, training, recruiting,
23 hiring, and oversight standards and programs to
24 promote effective community and problem solving
25 strategies for law enforcement agencies; or

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(2) effective strategies and solutions to public safety, including strategies that do not rely on Federal and local law enforcement agency responses.

(c) USE OF FUNDS.—Grant amounts described in paragraph (8) of section 502(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10153(a)), as added by subsection (a) of this section, and grant amounts awarded under subsection (b) shall be used to—

(1) study management and operations standards for law enforcement agencies, including standards relating to administrative due process, residency requirements, compensation and benefits, use of force, racial profiling, early warning and intervention systems, youth justice, school safety, civilian review boards or analogous procedures, or research into the effectiveness of existing programs, projects, or other activities designed to address misconduct; and

(2) develop pilot programs and implement effective standards and programs in the areas of training, hiring and recruitment, and oversight that are designed to improve management and address misconduct by law enforcement officers.
(d) COMPONENTS OF PILOT PROGRAM.—A pilot program developed under subsection (c)(2) shall include implementation of the following:

(1) TRAINING.—The implementation of policies, practices, and procedures addressing training and instruction to comply with accreditation standards in the areas of—

(A) the use of deadly force, less lethal force, and de-escalation tactics and techniques;

(B) investigation of officer misconduct and practices and procedures for referring to prosecuting authorities allegations of officer use of excessive force or racial profiling;

(C) disproportionate contact by law enforcement with minority communities;

(D) tactical and defensive strategy;

(E) arrests, searches, and restraint;

(F) professional verbal communications with civilians;

(G) interactions with—

(i) youth;

(ii) individuals with disabilities;

(iii) individuals with limited English proficiency; and

(iv) multi-cultural communities;
(H) proper traffic, pedestrian, and other
enforcement stops; and

(I) community relations and bias aware-
ness.

(2) Recruitment, hiring, retention, and
promotion of diverse law enforcement offi-
cers.—Policies, procedures, and practices for—

(A) the hiring and recruitment of diverse
law enforcement officers who are representative
of the communities they serve;

(B) the development of selection, pro-
motion, educational, background, and psycho-
logical standards that comport with title VII of
the Civil Rights Act of 1964 (42 U.S.C. 2000e
et seq.); and

(C) initiatives to encourage residency in
the jurisdiction served by the law enforcement
agency and continuing education.

(3) Oversight.—Complaint procedures, in-
cluding the establishment of civilian review boards or
analogous procedures for jurisdictions across a range
of sizes and agency configurations, complaint proce-
dures by community-based organizations, early
warning systems and related intervention programs,
video monitoring technology, data collection and
transparency, and administrative due process re-
requirements inherent to complaint procedures for
members of the public and law enforcement.

(4) YOUTH JUSTICE AND SCHOOL SAFETY.—
Uniform standards on youth justice and school safe-
ty that include best practices for law enforcement
interaction and communication with children and
youth, taking into consideration adolescent develop-
ment and any disability, including—

(A) the right to effective and timely notifi-
cation of a parent or legal guardian of any law
enforcement interaction, regardless of the immi-
gration status of the individuals involved; and

(B) the creation of positive school climates
by improving school conditions for learning
by—

(i) eliminating school-based arrests
and referrals to law enforcement;

(ii) using evidence-based preventative
measures and alternatives to school-based
arrests and referrals to law enforcement,
such as restorative justice and healing
practices; and

(iii) using school-wide positive behav-
ioral interventions and supports.
(5) VICTIM SERVICES.—Counseling services, including psychological counseling, for individuals and communities impacted by law enforcement misconduct.

(e) TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—The Attorney General may provide technical assistance to States and community-based organizations in furtherance of the purposes of this section.

(2) MODELS FOR REDUCTION OF LAW ENFORCEMENT MISCONDUCT.—The technical assistance provided by the Attorney General may include the development of models for States and community-based organizations to reduce law enforcement officer misconduct. Any development of such models shall be in consultation with community-based organizations.

(f) USE OF COMPONENTS.—The Attorney General may use any component or components of the Department of Justice in carrying out this section.

(g) APPLICATIONS.—An application for a grant under subsection (b) shall be submitted in such form, and contain such information, as the Attorney General may prescribe by rule.

(h) PERFORMANCE EVALUATION.—
(1) Monitoring Components.—

(A) In general.—Each program, project, or activity funded under this section shall contain a monitoring component, which shall be developed pursuant to rules made by the Attorney General.

(B) Requirement.—Each monitoring component required under subparagraph (A) shall include systematic identification and collection of data about activities, accomplishments, and programs throughout the duration of the program, project, or activity and presentation of such data in a usable form.

(2) Evaluation Components.—

(A) In general.—Selected grant recipients shall be evaluated on the local level or as part of a national evaluation, pursuant to rules made by the Attorney General.

(B) Requirements.—An evaluation conducted under subparagraph (A) may include independent audits of police behavior and other assessments of individual program implementations. For community-based organizations in selected jurisdictions that are able to support outcome evaluations, the effectiveness of funded
programs, projects, and activities may be re-
quired.

(3) Periodic review and reports.—The At-
torney General may require a grant recipient to sub-
mit biannually to the Attorney General the results of
the monitoring and evaluations required under para-
graphs (1) and (2) and such other data and infor-
mation as the Attorney General determines to be
necessary.

(i) Revocation or Suspension of Funding.—If
the Attorney General determines, as a result of monitoring
under subsection (h) or otherwise, that a grant recipient
under the Byrne grant program or under subsection (b)
is not in substantial compliance with the requirements of
this section, the Attorney General may revoke or suspend
funding of that grant, in whole or in part.

(j) Civilian Review Board Defined.—In this sec-
tion, the term “civilian review board” means an adminis-
trative entity that investigates civilian complaints against
law enforcement officers and—

(1) is independent and adequately funded;
(2) has investigatory authority and subpoena
power;
(3) has representative community diversity;
(4) has policy making authority;
(5) provides advocates for civilian complainants;
(6) may conduct hearings; and
(7) conducts statistical studies on prevailing complaint trends.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $25,000,000 for fiscal year 2021 to carry out the grant program authorized under subsection (b).

SEC. 115. ATTORNEY GENERAL TO CONDUCT STUDY.

(a) STUDY.—

(1) IN GENERAL.—The Attorney General shall conduct a nationwide study of the prevalence and effect of any law, rule, or procedure that allows a law enforcement officer to delay the response to questions posed by a local internal affairs officer, or review board on the investigative integrity and prosecution of law enforcement misconduct, including pre-interview warnings and termination policies.

(2) INITIAL ANALYSIS.—The Attorney General shall perform an initial analysis of existing State laws, rules, and procedures to determine whether, at a threshold level, the effect of the type of law, rule, or procedure that raises material investigatory issues that could impair or hinder a prompt and thorough
investigation of possible misconduct, including criminal conduct.

(3) **Data Collection.**—After completion of the initial analysis under paragraph (2), and considering material investigatory issues, the Attorney General shall gather additional data nationwide on similar laws, rules, and procedures from a representative and statistically significant sample of jurisdictions, to determine whether such laws, rules, and procedures raise such material investigatory issues.

(b) **Reporting.**—

(1) **Initial Analysis.**—Not later than 120 days after the date of the enactment of this Act, the Attorney General shall—

(A) submit to Congress a report containing the results of the initial analysis conducted under subsection (a)(2);

(B) make the report submitted under subparagraph (A) available to the public; and

(C) identify the jurisdictions for which the study described in subsection (a)(3) is to be conducted.

(2) **Data Collected.**—Not later than 2 years after the date of the enactment of this Act, the Attorney General shall submit to Congress a report
containing the results of the data collected under
this section and publish the report in the Federal
Register.

SEC. 116. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal
year 2021, in addition to any other sums authorized to
be appropriated—

(1) $25,000,000 for additional expenses relating
to the enforcement of section 210401 of the Violen-
t Crime Control and Law Enforcement Act of
1994 (34 U.S.C. 12601), criminal enforcement
under sections 241 and 242 of title 18, United
States Code, and administrative enforcement by the
Department of Justice of such sections, including
compliance with consent decrees or judgments en-
tered into under such section 210401; and

(2) $3,300,000 for additional expenses related
to conflict resolution by the Department of Justice’s
Community Relations Service.

SEC. 117. NATIONAL TASK FORCE ON LAW ENFORCEMENT
OVERSIGHT.

(a) ESTABLISHMENT.—There is established within
the Department of Justice a task force to be known as
the Task Force on Law Enforcement Oversight (herein-
after in this section referred to as the “Task Force”).
(b) COMPOSITION.—The Task Force shall be composed of individuals appointed by the Attorney General, who shall appoint not less than 1 individual from each of the following:

(1) The Special Litigation Section of the Civil Rights Division.

(2) The Criminal Section of the Civil Rights Division.

(3) The Federal Coordination and Compliance Section of the Civil Rights Division.

(4) The Employment Litigation Section of the Civil Rights Division.

(5) The Disability Rights Section of the Civil Rights Division.

(6) The Office of Justice Programs.

(7) The Office of Community Oriented Policing Services (COPS).

(8) The Corruption/Civil Rights Section of the Federal Bureau of Investigation.

(9) The Community Relations Service.

(10) The Office of Tribal Justice.

(11) The unit within the Department of Justice assigned as a liaison for civilian review boards.

(c) POWERS AND DUTIES.—The Task Force shall consult with professional law enforcement associations,
labor organizations, and community-based organizations
to coordinate the process of the detection and referral of
complaints regarding incidents of alleged law enforcement
misconduct.

(d) Authorization of Appropriations.—There
are authorized to be appropriated $5,000,000 for each fis-
cal year to carry out this section.

SEC. 118. FEDERAL DATA COLLECTION ON LAW ENFORCE-
MENT PRACTICES.

(a) Agencies To Report.—Each Federal, State,
Tribal, and local law enforcement agency shall report data
of the practices enumerated in subsection (c) of that agen-
cy to the Attorney General.

(b) Breakdown of Information by Race, Eth-
icity, and Gender.—For each practice enumerated in
subsection (c), the reporting law enforcement agency shall
provide a breakdown of the numbers of incidents of that
practice by race, ethnicity, age, and gender of the officers
of the agency and of members of the public involved in
the practice.

(c) Practices To Be Reported on.—The prac-
tices to be reported on are the following:

(1) Traffic violation stops.

(2) Pedestrian stops.

(3) Frisk and body searches.
(4) Instances where law enforcement officers used deadly force, including—

(A) a description of when and where deadly force was used, and whether it resulted in death;

(B) a description of deadly force directed against an officer and whether it resulted in injury or death; and

(C) the law enforcement agency's justification for use of deadly force, if the agency determines it was justified.

(d) RETENTION OF DATA.—Each law enforcement agency required to report data under this section shall maintain records relating to any matter reported for not less than 4 years after those records are created.

(e) PENALTY FOR STATES FAILING TO REPORT AS REQUIRED.—

(1) IN GENERAL.—For any fiscal year, a State shall not receive any amount that would otherwise be allocated to that State under section 505(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10156(a)), or any amount from any other law enforcement assistance program of the Department of Justice, unless the State has ensured, to the satisfaction of the Attor-
ney General, that the State and each local law enforcement agency of the State is in substantial compliance with the requirements of this section.

(2) REALLOCATION.—Amounts not allocated by reason of this subsection shall be reallocated to States not disqualified by failure to comply with this section.

(f) REGULATIONS.—The Attorney General shall prescribe regulations to carry out this section.

TITLE II—POLICING TRANSPARENCY THROUGH DATA
Subtitle A—National Police Misconduct Registry

SEC. 201. ESTABLISHMENT OF NATIONAL POLICE MISCONDUCT REGISTRY.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall establish a National Police Misconduct Registry to be compiled and maintained by the Department of Justice.

(b) CONTENTS OF REGISTRY.—The Registry required to be established under subsection (a) shall contain the following data with respect to all Federal and local law enforcement officers:

(1) Each complaint filed against a law enforcement officer, aggregated by—
(A) complaints that were found to be credible or that resulted in disciplinary action against the law enforcement officer, disaggregated by whether the complaint involved a use of force or racial profiling (as such term is defined in section 302);

(B) complaints that are pending review, disaggregated by whether the complaint involved a use of force or racial profiling; and

(C) complaints for which the law enforcement officer was exonerated or that were determined to be unfounded or not sustained, disaggregated by whether the complaint involved a use of force or racial profiling.

(2) Discipline records, disaggregated by whether the complaint involved a use of force or racial profiling.

(3) Termination records, the reason for each termination, disaggregated by whether the complaint involved a use of force or racial profiling.

(4) Records of certification in accordance with section 202.

(5) Records of lawsuits against law enforcement officers and settlements of such lawsuits.
(6) Instances where a law enforcement officer resigns or retires while under active investigation related to the use of force.

(c) **Federal Agency Reporting Requirements.**—Not later than 1 year after the date of enactment of this Act, and every 6 months thereafter, the head of each Federal law enforcement agency shall submit to the Attorney General the information described in subsection (b).

(d) **State and Local Law Enforcement Agency Reporting Requirements.**—Beginning in the first fiscal year that begins after the date that is one year after the date of enactment of this Act and each fiscal year thereafter in which a State receives funds under the Byrne grant program, the State shall, once every 180 days, submit to the Attorney General the information described in subsection (b) for the State and each local law enforcement agency within the State.

(e) **Public Availability of Registry.**—

(1) **In General.**—In establishing the Registry required under subsection (a), the Attorney General shall make the Registry available to the public on an internet website of the Attorney General in a manner that allows members of the public to search for an individual law enforcement officer’s records of
misconduct, as described in subsection (b), involving a use of force or racial profiling.

(2) PRIVACY PROTECTIONS.—Nothing in this subsection shall be construed to supersede the requirements or limitations under section 552a of title 5, United States Code (commonly known as the “Privacy Act of 1974”).

SEC. 202. CERTIFICATION REQUIREMENTS FOR HIRING OF LAW ENFORCEMENT OFFICERS.

(a) IN GENERAL.—Beginning in the first fiscal year that begins after the date that is one year after the date of the enactment of this Act, a State or unit of local government, other than an Indian Tribe, may not receive funds under the Byrne grant program for that fiscal year if, on the day before the first day of the fiscal year, the State or unit of local government has not—

(1) submitted to the Attorney General evidence that the State or unit of local government has a certification and decertification program for purposes of employment as a law enforcement officer in that State or unit of local government that is consistent with the rules made under subsection (c); and

(2) submitted to the National Police Misconduct Registry established under section 201 records demonstrating that all law enforcement offi-
cers of the State or unit of local government have
completed all State certification requirements during
the 1-year period preceding the fiscal year.

(b) Availability of Information.—The Attorney
General shall make available to law enforcement agencies
all information in the registry under section 201 for pur-
poses of compliance with the certification and decertifica-
tion programs described in subsection (a)(1) and consid-
ering applications for employment.

c) Rules.—The Attorney General shall make rules
to carry out this section and section 201, including uni-
form reporting standards.

Subtitle B—PRIDE Act

Sec. 221. Short Title.
This subtitle may be cited as the “Police Reporting
Information, Data, and Evidence Act of 2020” or the
“PRIDE Act of 2020”.

Sec. 222. Definitions.
In this subtitle:

1. Local educational agency.—The term
“local educational agency” has the meaning given
the term in section 8101 of the Elementary and Sec-

2. Local law enforcement officer.—The
term “local law enforcement officer” has the mean-
ing given the term in section 2, and includes a
school resource officer.

(3) SCHOOL.—The term “school” means an ele-
mentary school or secondary school (as those terms
are defined in section 8101 of the Elementary and
Secondary Education Act of 1965 (20 U.S.C.
7801)).

(4) SCHOOL RESOURCE OFFICER.—The term
“school resource officer” means a sworn law enforce-
ment officer who is—

(A) assigned by the employing law enforce-
ment agency to a local educational agency or
school;

(B) contracting with a local educational
agency or school; or

(C) employed by a local educational agency
or school.

SEC. 223. USE OF FORCE REPORTING.

(a) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Beginning in the first fiscal
year that begins after the date that is one year after
the date of enactment of this Act and each fiscal
year thereafter in which a State or Indian Tribe re-
ceives funds under a Byrne grant program, the
State or Indian Tribe shall—
(A) report to the Attorney General, on a quarterly basis and pursuant to guidelines established by the Attorney General, information regarding—

(i) any incident involving the use of deadly force against a civilian by—

(I) a local law enforcement officer who is employed by the State or by a unit of local government in the State; or

(II) a tribal law enforcement officer who is employed by the Indian Tribe;

(ii) any incident involving the shooting of a local law enforcement officer or tribal law enforcement officer described in clause (i) by a civilian;

(iii) any incident involving the death or arrest of a local law enforcement officer or tribal law enforcement officer;

(iv) any incident during which use of force by or against a local law enforcement officer or tribal law enforcement officer described in clause (i) occurs, which is not reported under clause (i), (ii), or (iii);
(v) deaths in custody; and

(vi) uses of force in arrests and booking;

(B) establish a system and a set of policies to ensure that all use of force incidents are reported by local law enforcement officers or tribal law enforcement officers; and

(C) submit to the Attorney General a plan for the collection of data required to be reported under this section, including any modifications to a previously submitted data collection plan.

(2) REPORT INFORMATION REQUIRED.—

(A) IN GENERAL.—The report required under paragraph (1)(A) shall contain information that includes, at a minimum—

(i) the national origin, sex, race, ethnicity, age, disability, English language proficiency, and housing status of each civilian against whom a local law enforcement officer or tribal law enforcement officer used force;

(ii) the date, time, and location, including whether it was on school grounds, and the zip code, of the incident and
whether the jurisdiction in which the incident occurred allows for the open-carry or concealed-carry of a firearm;

(iii) whether the civilian was armed, and, if so, the type of weapon the civilian had;

(iv) the type of force used against the officer, the civilian, or both, including the types of weapons used;

(v) the reason force was used;

(vi) a description of any injuries sustained as a result of the incident;

(vii) the number of officers involved in the incident;

(viii) the number of civilians involved in the incident; and

(ix) a brief description regarding the circumstances surrounding the incident, which shall include information on—

(I) the type of force used by all involved persons;

(II) the legitimate police objective necessitating the use of force;

(III) the resistance encountered by each local law enforcement officer
or tribal law enforcement officer involved in the incident;

(IV) the efforts by local law enforcement officers or tribal law enforcement officers to—

(aa) de-escalate the situation in order to avoid the use of force;
or

(bb) minimize the level of force used; and

(V) if applicable, the reason why efforts described in subclause (IV) were not attempted.

(B) INCIDENTS REPORTED UNDER DEATH IN CUSTODY REPORTING ACT.—A State or Indian Tribe is not required to include in a report under subsection (a)(1) an incident reported by the State or Indian Tribe in accordance with section 20104(a)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (34 U.S.C. 12104(a)(2)).

(C) RETENTION OF DATA.—Each law enforcement agency required to report data under this section shall maintain records relating to
any matter so reportable for not less than 4
years after those records are created.

(3) Audit of use-of-force reporting.—Not
later than 1 year after the date of enactment of this
Act, and each year thereafter, each State or Indian
Tribe described in paragraph (1) shall—

(A) conduct an audit of the use of force in-
cident reporting system required to be estab-
lished under paragraph (1)(B); and

(B) submit a report to the Attorney Gen-
eral on the audit conducted under subpara-
graph (A).

(4) Compliance procedure.—Prior to sub-
mitting a report under paragraph (1)(A), the State
or Indian Tribe submitting such report shall com-
pare the information compiled to be reported pursu-
ant to clause (i) of paragraph (1)(A) to publicly
available sources, and shall revise such report to in-
clude any incident determined to be missing from
the report based on such comparison. Failure to
comply with the procedures described in the previous
sentence shall be considered a failure to comply with
the requirements of this section.

(b) Ineligibility for funds.—
(1) IN GENERAL.—For any fiscal year in which a State or Indian Tribe fails to comply with this section, the State or Indian Tribe, at the discretion of the Attorney General, shall be subject to not more than a 10-percent reduction of the funds that would otherwise be allocated for that fiscal year to the State or Indian Tribe under a Byrne grant program.

(2) REALLOCATION.—Amounts not allocated under a Byrne grant program in accordance with paragraph (1) to a State for failure to comply with this section shall be reallocated under the Byrne grant program to States that have not failed to comply with this section.

(3) INFORMATION REGARDING SCHOOL RESOURCE OFFICERS.—The State or Indian Tribe shall ensure that all schools and local educational agencies within the jurisdiction of the State or Indian Tribe provide the State or Indian Tribe with the information needed regarding school resource officers to comply with this section.

(c) PUBLIC AVAILABILITY OF DATA.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Attorney General shall publish, and make available to the public, a report containing the
data reported to the Attorney General under this section.

(2) PRIVACY PROTECTIONS.—Nothing in this subsection shall be construed to supersede the requirements or limitations under section 552a of title 5, United States Code (commonly known as the “Privacy Act of 1974”).

(d) GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in coordination with the Director of the Federal Bureau of Investigation, shall issue guidance on best practices relating to establishing standard data collection systems that capture the information required to be reported under subsection (a)(2), which shall include standard and consistent definitions for terms.

SEC. 224. USE OF FORCE DATA REPORTING.

(a) TECHNICAL ASSISTANCE GRANTS AUTHORIZED.—The Attorney General may make grants to eligible law enforcement agencies to be used for the activities described in subsection (c).

(b) ELIGIBILITY.—In order to be eligible to receive a grant under this section a law enforcement agency shall—
(1) be a tribal law enforcement agency or be located in a State that receives funds under a Byrne grant program;

(2) employ not more that 100 local or tribal law enforcement officers;

(3) demonstrate that the use of force policy for local law enforcement officers or tribal law enforcement officers employed by the law enforcement agency is publicly available; and

(4) establish and maintain a complaint system that—

(A) may be used by members of the public to report incidents of use of force to the law enforcement agency;

(B) makes all information collected publicly searchable and available; and

(C) provides information on the status of an investigation related to a use of force complaint.

(c) ACTIVITIES DESCRIBED.—A grant made under this section may be used by a law enforcement agency for—

(1) the cost of assisting the State or Indian Tribe in which the law enforcement agency is located
in complying with the reporting requirements de-
scribed in section 223;

(2) the cost of establishing necessary systems
required to investigate and report incidents as re-
quired under subsection (b)(4);

(3) public awareness campaigns designed to
gain information from the public on use of force by
or against local and tribal law enforcement officers,
including shootings, which may include tip lines, hot-
lines, and public service announcements; and

(4) use of force training for law enforcement
agencies and personnel, including training on de-es-
calation, implicit bias, crisis intervention techniques,
and adolescent development.

SEC. 225. COMPLIANCE WITH REPORTING REQUIREMENTS.

(a) In General.—Not later than 1 year after the
date of enactment of this Act, and each year thereafter,
the Attorney General shall conduct an audit and review
of the information provided under this subtitle to deter-
mine whether each State or Indian Tribe described in sec-
tion 223(a)(1) is in compliance with the requirements of
this subtitle.

(b) Consistency in Data Reporting.—

(1) In General.—Any data reported under
this subtitle shall be collected and reported—
(A) in a manner consistent with existing
programs of the Department of Justice that
collect data on local law enforcement officer en-
counters with civilians; and

(B) in a manner consistent with civil rights
laws for distribution of information to the pub-
lic.

(2) GUIDELINES.—Not later than 1 year after
the date of enactment of this Act, the Attorney Gen-
eral shall—

(A) issue guidelines on the reporting re-
quirement under section 223; and

(B) seek public comment before finalizing
the guidelines required under subparagraph
(A).

SEC. 226. FEDERAL LAW ENFORCEMENT REPORTING.
The head of each Federal law enforcement agency
shall submit to the Attorney General, on a quarterly basis
and pursuant to guidelines established by the Attorney
General, the information required to be reported by a
State or Indian Tribe under section 223.

SEC. 227. AUTHORIZATION OF APPROPRIATIONS.
There are authorized to be appropriated to the Attor-
ney General such sums as are necessary to carry out this
subtitle.
TITLE III—IMPROVING POLICE
TRAINING AND POLICIES
Subtitle A—End Racial and
Religious Profiling Act

SEC. 301. SHORT TITLE.

This subtitle may be cited as the “End Racial and
Religious Profiling Act of 2020” or “ERRPA”.

SEC. 302. DEFINITIONS.

In this subtitle:

(1) COVERED PROGRAM.—The term “covered
program” means any program or activity funded in
whole or in part with funds made available under—

(A) a Byrne grant program; and

(B) the COPS grant program, except that

no program, project, or other activity specified
in section 1701(b)(13) of part Q of title I of the
Omnibus Crime Control and Safe Streets Act of
1968 (34 U.S.C. 10381 et seq.) shall be a cov-
ered program under this paragraph.

(2) GOVERNMENTAL BODY.—The term “govern-
mental body” means any department, agency, special
purpose district, or other instrumentality of Federal,
State, local, or Indian Tribal government.

(3) HIT RATE.—The term “hit rate” means the
percentage of stops and searches in which a law en-
enforcement agent finds drugs, a gun, or something else that leads to an arrest. The hit rate is calculated by dividing the total number of searches by the number of searches that yield contraband. The hit rate is complementary to the rate of false stops.

(4) LAW ENFORCEMENT AGENCY.—The term “law enforcement agency” means any Federal, State, or local public agency engaged in the prevention, detection, or investigation of violations of criminal, immigration, or customs laws.

(5) LAW ENFORCEMENT AGENT.—The term “law enforcement agent” means any Federal, State, or local official responsible for enforcing criminal, immigration, or customs laws, including police officers and other agents of a law enforcement agency.

(6) RACIAL PROFILING.—

(A) IN GENERAL.—The term “racial profiling” means the practice of a law enforcement agent or agency relying, to any degree, on actual or perceived race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the
initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person with a particular characteristic described in this paragraph to an identified criminal incident or scheme.

(B) EXCEPTION.—For purposes of subparagraph (A), a tribal law enforcement officer exercising law enforcement authority within Indian country, as that term is defined in section 1151 of title 18, United States Code, is not considered to be racial profiling with respect to making key jurisdictional determinations that are necessarily tied to reliance on actual or perceived race, ethnicity, or tribal affiliation.

(7) ROUTINE OR SPONTANEOUS INVESTIGATORY ACTIVITIES.—The term "routine or spontaneous investigatory activities" means the following activities by a law enforcement agent:

(A) Interviews.

(B) Traffic stops.

(C) Pedestrian stops.

(D) Frisks and other types of body searches.
(E) Consensual or nonconsensual searches of the persons, property, or possessions (including vehicles) of individuals using any form of public or private transportation, including motorists and pedestrians.

(F) Data collection and analysis, assessments, and predicated investigations.

(G) Inspections and interviews of entrants into the United States that are more extensive than those customarily carried out.

(H) Immigration-related workplace investigations.

(I) Such other types of law enforcement encounters compiled for or by the Federal Bureau of Investigation or the Department of Justice Bureau of Justice Statistics.

(8) REASONABLE REQUEST.—The term "reasonable request" means all requests for information, except for those that—

(A) are immaterial to the investigation;

(B) would result in the unnecessary disclosure of personal information; or

(C) would place a severe burden on the resources of the law enforcement agency given its size.
PART I—PROHIBITION OF RACIAL PROFILING

SEC. 311. PROHIBITION.

No law enforcement agent or law enforcement agency shall engage in racial profiling.

SEC. 312. ENFORCEMENT.

(a) REMEDY.—The United States, or an individual injured by racial profiling, may enforce this part in a civil action for declaratory or injunctive relief, filed either in a State court of general jurisdiction or in a district court of the United States.

(b) PARTIES.—In any action brought under this part, relief may be obtained against—

(1) any governmental body that employed any law enforcement agent who engaged in racial profiling;

(2) any agent of such body who engaged in racial profiling; and

(3) any person with supervisory authority over such agent.

(c) NATURE OF PROOF.—Proof that the routine or spontaneous investigatory activities of law enforcement agents in a jurisdiction have had a disparate impact on individuals with a particular characteristic described in section 302(6) shall constitute prima facie evidence of a violation of this part.
(d) Attorney’s Fees.—In any action or proceeding to enforce this part against any governmental body, the court may allow a prevailing plaintiff, other than the United States, reasonable attorney’s fees as part of the costs, and may include expert fees as part of the attorney’s fee. The term “prevailing plaintiff” means a plaintiff that substantially prevails pursuant to a judicial or administrative judgment or order, or an enforceable written agreement.

PART II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AGENCIES

SEC. 321. POLICIES TO ELIMINATE RACIAL PROFILING.

(a) In General.—Federal law enforcement agencies shall—

(1) maintain adequate policies and procedures designed to eliminate racial profiling; and

(2) cease existing practices that permit racial profiling.

(b) Policies.—The policies and procedures described in subsection (a)(1) shall include—

(1) a prohibition on racial profiling;

(2) training on racial profiling issues as part of Federal law enforcement training;
(3) the collection of data in accordance with the regulations issued by the Attorney General under section 341;

(4) procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement agents; and

(5) any other policies and procedures the Attorney General determines to be necessary to eliminate racial profiling by Federal law enforcement agencies.

PART III—PROGRAMS TO ELIMINATE RACIAL PROFILING BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES

SEC. 331. POLICIES REQUIRED FOR GRANTS.

(a) In general.—An application by a State or a unit of local government for funding under a covered program shall include a certification that such State, unit of local government, and any law enforcement agency to which it will distribute funds—

(1) maintains adequate policies and procedures designed to eliminate racial profiling; and

(2) has eliminated any existing practices that permit or encourage racial profiling.

(b) Policies.—The policies and procedures described in subsection (a)(1) shall include—

(1) a prohibition on racial profiling;
(2) training on racial profiling issues as part of law enforcement training;

(3) the collection of data in accordance with the regulations issued by the Attorney General under section 341; and

(4) participation in an administrative complaint procedure or independent audit program that meets the requirements of section 332.

(c) EFFECTIVE DATE.—This section shall take effect 12 months after the date of enactment of this Act.

SEC. 332. INVOLVEMENT OF ATTORNEY GENERAL.

(a) REGULATIONS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act and in consultation with stakeholders, including Federal, State, and local law enforcement agencies and community, professional, research, and civil rights organizations, the Attorney General shall issue regulations for the operation of administrative complaint procedures and independent audit programs to ensure that such procedures and programs provide an appropriate response to allegations of racial profiling by law enforcement agents or agencies.

(2) GUIDELINES.—The regulations issued under paragraph (1) shall contain guidelines that
ensure the fairness, effectiveness, and independence
of the administrative complaint procedures and inde-
pendent auditor programs.

(b) NONCOMPLIANCE.—If the Attorney General de-
determines that the recipient of a grant from any covered
program is not in compliance with the requirements of sec-
tion 331 or the regulations issued under subsection (a),
the Attorney General shall withhold, in whole or in part
(at the discretion of the Attorney General), funds for one
or more grants to the recipient under the covered pro-
gram, until the recipient establishes compliance.

(c) PRIVATE PARTIES.—The Attorney General shall
provide notice and an opportunity for private parties to
present evidence to the Attorney General that a recipient
of a grant from any covered program is not in compliance
with the requirements of this part.

SEC. 333. DATA COLLECTION DEMONSTRATION PROJECT.

(a) TECHNICAL ASSISTANCE GRANTS FOR DATA
COLLECTION.—

(1) IN GENERAL.—The Attorney General may,
through competitive grants or contracts, carry out a
2-year demonstration project for the purpose of de-
veloping and implementing data collection programs
on the hit rates for stops and searches by law en-
forcement agencies. The data collected shall be
disaggregated by race, ethnicity, national origin, gender, and religion.

(2) **NUMBER OF GRANTS.**—The Attorney General shall provide not more than 5 grants or contracts under this section.

(3) **ELIGIBLE GRANTEES.**—Grants or contracts under this section shall be awarded to law enforcement agencies that serve communities where there is a significant concentration of racial or ethnic minorities and that are not already collecting data voluntarily.

(b) **REQUIRED ACTIVITIES.**—Activities carried out with a grant under this section shall include—

(1) developing a data collection tool and reporting the compiled data to the Attorney General; and

(2) training of law enforcement personnel on data collection, particularly for data collection on hit rates for stops and searches.

(c) **EVALUATION.**—Not later than 3 years after the date of enactment of this Act, the Attorney General shall enter into a contract with an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) to analyze the data collected by each of the grantees funded under this section.
(d) Authorization of Appropriations.—There
are authorized to be appropriated to carry out activities
under this section—

(1) $5,000,000, over a 2-year period, to carry
out the demonstration program under subsection
(a); and

(2) $500,000 to carry out the evaluation under
subsection (c).

SEC. 334. DEVELOPMENT OF BEST PRACTICES.

(a) Use of Funds Requirement.—Section 502(a)
of title I of the Omnibus Crime Control and Safe Streets
Act of 1968 (34 U.S.C. 10153(a)), as amended by sections
113 and 114, is amended by adding at the end the fol-
lowing:

"(9) An assurance that, for each fiscal year
covered by an application, the applicant will use not
less than 10 percent of the total amount of the
grant award for the fiscal year to develop and imple-
ment best practice devices and systems to eliminate
racial profiling in accordance with section 334 of the
End Racial and Religious Profiling Act of 2020.”.

(b) Development of Best Practices.—Grant
amounts described in paragraph (9) of section 502(a) of
title I of the Omnibus Crime Control and Safe Streets Act
of 1968 (34 U.S.C. 10153(a)), as added by subsection (a)
of this section, shall be for programs that include the fol-
lowing:

(1) The development and implementation of
training to prevent racial profiling and to encourage
more respectful interaction with the public.

(2) The acquisition and use of technology to fa-
cilitate the accurate collection and analysis of data.

(3) The development and acquisition of feed-
back systems and technologies that identify law en-
forcement agents or units of agents engaged in, or
at risk of engaging in, racial profiling or other mis-
conduct.

(4) The establishment and maintenance of an
administrative complaint procedure or independent
auditor program.

**SEC. 335. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Attor-
ney General such sums as are necessary to carry out this
part.

**PART IV—DATA COLLECTION**

**SEC. 341. ATTORNEY GENERAL TO ISSUE REGULATIONS.**

(a) Regulations.—Not later than 6 months after
the date of enactment of this Act, the Attorney General,
in consultation with stakeholders, including Federal,
State, and local law enforcement agencies and community,
professional, research, and civil rights organizations, shall
issue regulations for the collection and compilation of data
under sections 321 and 331.

(b) REQUIREMENTS.—The regulations issued under
subsection (a) shall—

(1) provide for the collection of data on all rou-
tine and spontaneous investigatory activities;

(2) provide that the data collected shall—

(A) be disaggregated by race, ethnicity, na-
tional origin, gender, disability, and religion;

(B) include the date, time, and location of
such investigatory activities;

(C) include detail sufficient to permit an
analysis of whether a law enforcement agency is
engaging in racial profiling; and

(D) not include personally identifiable in-
formation;

(3) provide that a standardized form shall be
made available to law enforcement agencies for the
submission of collected data to the Department of
Justice;

(4) provide that law enforcement agencies shall
compile data on the standardized form made avail-
able under paragraph (3), and submit the form to
the Civil Rights Division and the Department of
Justice Bureau of Justice Statistics;

(5) provide that law enforcement agencies shall
maintain all data collected under this subtitle for not
less than 4 years;

(6) include guidelines for setting comparative
benchmarks, consistent with best practices, against
which collected data shall be measured;

(7) provide that the Department of Justice Bu-
reau of Justice Statistics shall—

(A) analyze the data for any statistically
significant disparities, including—

(i) disparities in the percentage of
drivers or pedestrians stopped relative to
the proportion of the population passing
through the neighborhood;

(ii) disparities in the hit rate; and

(iii) disparities in the frequency of
searches performed on racial or ethnic mi-
nority drivers and the frequency of
searches performed on nonminority drivers;
and

(B) not later than 3 years after the date
of enactment of this Act, and annually there-
after—
(i) prepare a report regarding the
findings of the analysis conducted under
subparagraph (A);

(ii) provide such report to Congress;

and

(iii) make such report available to the
public, including on a website of the De-
partment of Justice, and in accordance
with accessibility standards under the
Americans with Disabilities Act of 1990
(42 U.S.C. 12101 et seq.); and

(8) protect the privacy of individuals whose
data is collected by—

(A) limiting the use of the data collected
under this subtitle to the purposes set forth in
this subtitle;

(B) except as otherwise provided in this
subtitle, limiting access to the data collected
under this subtitle to those Federal, State, or
local employees or agents who require such ac-
cess in order to fulfill the purposes for the data
set forth in this subtitle;

(C) requiring contractors or other non-
governmental agents who are permitted access
to the data collected under this subtitle to sign
use agreements incorporating the use and disclosure restrictions set forth in subparagraph (A); and
(D) requiring the maintenance of adequate security measures to prevent unauthorized access to the data collected under this subtitle.

SEC. 342. PUBLICATION OF DATA.

The Director of the Bureau of Justice Statistics of the Department of Justice shall provide to Congress and make available to the public, together with each annual report described in section 341, the data collected pursuant to this subtitle, excluding any personally identifiable information described in section 343.

SEC. 343. LIMITATIONS ON PUBLICATION OF DATA.

The name or identifying information of a law enforcement agent, complainant, or any other individual involved in any activity for which data is collected and compiled under this subtitle shall not be—

(1) released to the public;
(2) disclosed to any person, except for—
(A) such disclosures as are necessary to comply with this subtitle;
(B) disclosures of information regarding a particular person to that person; or
(C) disclosures pursuant to litigation; or
(3) subject to disclosure under section 552 of
title 5, United States Code (commonly known as the
Freedom of Information Act), except for disclosures
of information regarding a particular person to that
person.

PART V—DEPARTMENT OF JUSTICE REGULA-
TIONS AND REPORTS ON RACIAL PROFILING
IN THE UNITED STATES

SEC. 351. ATTORNEY GENERAL TO ISSUE REGULATIONS
AND REPORTS.

(a) Regulations.—In addition to the regulations re-
quired under sections 333 and 341, the Attorney General
shall issue such other regulations as the Attorney General
determines are necessary to implement this subtitle.

(b) Reports.—

(1) In general.—Not later than 2 years after
the date of enactment of this Act, and annually
thereafter, the Attorney General shall submit to
Congress a report on racial profiling by law enforce-
ment agencies.

(2) Scope.—Each report submitted under
paragraph (1) shall include—

(A) a summary of data collected under sec-
tions 321(b)(3) and 331(b)(3) and from any
other reliable source of information regarding racial profiling in the United States;

(B) a discussion of the findings in the most recent report prepared by the Department of Justice Bureau of Justice Statistics under section 341(b)(7);

(C) the status of the adoption and implementation of policies and procedures by Federal law enforcement agencies under section 321 and by the State and local law enforcement agencies under sections 331 and 332; and

(D) a description of any other policies and procedures that the Attorney General believes would facilitate the elimination of racial profiling.

Subtitle B—Additional Reforms

SEC. 361. TRAINING ON RACIAL BIAS AND DUTY TO INTERVENE.

(a) In General.—The Attorney General shall establish—

(1) a training program for law enforcement officers to cover racial profiling, implicit bias, and procedural justice; and

(2) a clear duty for Federal law enforcement officers to intervene in cases where another law en-
enforcement officer is using excessive force against a civilian, and establish a training program that covers the duty to intervene.

(b) MANDATORY TRAINING FOR FEDERAL LAW ENFORCEMENT OFFICERS.—The head of each Federal law enforcement agency shall require each Federal law enforcement officer employed by the agency to complete the training programs established under subsection (a).

c) LIMITATION ON ELIGIBILITY FOR FUNDS.—Beginning in the first fiscal year that begins after the date that is one year after the date of enactment of this Act, a State or unit of local government may not receive funds under the Byrne grant program for a fiscal year if, on the day before the first day of the fiscal year, the State or unit of local government does not require each law enforcement officer in the State or unit of local government to complete the training programs established under subsection (a).

d) GRANTS TO TRAIN LAW ENFORCEMENT OFFICERS ON USE OF FORCE.—Section 501(a)(1) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10152(a)(1)) is amended by adding at the end the following:
“(I) Training programs for law enforcement officers, including training programs on use of force and a duty to intervene.”.

SEC. 362. BAN ON NO-KNOCK WARRANTS IN DRUG CASES.

(a) Ban on Federal Warrants in Drug Cases.—Section 509 of the Controlled Substances Act (21 U.S.C. 879) is amended by adding at the end the following: “A search warrant authorized under this section shall require that a law enforcement officer execute the search warrant only after providing notice of his or her authority and purpose.”.

(b) Limitation on Eligibility for Funds.—Beginning in the first fiscal year that begins after the date that is one year after the date of enactment of this Act, a State or unit of local government may not receive funds under the COPS grant program for a fiscal year if, on the day before the first day of the fiscal year, the State or unit of local government does not have in effect a law that prohibits the issuance of a no-knock warrant in a drug case.

(c) Definition.—In this section, the term “no-knock warrant” means a warrant that allows a law enforcement officer to enter a property without requiring the law enforcement officer to announce the presence of the
law enforcement officer or the intention of the law enforce-
ment officer to enter the property.

SEC. 363. INCENTIVIZING BANNING OF CHOKEHOLDS AND
CAROTID HOLDS.

(a) DEFINITION.—In this section, the term
“chokehold or carotid hold” means the application of any
pressure to the throat or windpipe, the use of maneuvers
that restrict blood or oxygen flow to the brain, or carotid
artery restraints that prevent or hinder breathing or re-
duce intake of air of an individual.

(b) LIMITATION ON ELIGIBILITY FOR FUNDS.—Be-
ginning in the first fiscal year that begins after the date
that is one year after the date of enactment of this Act,
a State or unit of local government may not receive funds
under the Byrne grant program or the COPS grant pro-
gram for a fiscal year if, on the day before the first day
of the fiscal year, the State or unit of local government
does not have in effect a law that prohibits law enforce-
ment officers in the State or unit of local government from
using a chokehold or carotid hold.

(c) CHOKEHOLDS AS CIVIL RIGHTS VIOLATIONS.—

(1) SHORT TITLE.—This subsection may be
cited as the “Eric Garner Excessive Use of Force
Prevention Act”.

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(2) CHOKETHOLDS AS CIVIL RIGHTS VIOLATIONS.—Section 242 of title 18, United States Code, as amended by section 101, is amended by adding at the end the following: "For the purposes of this section, the application of any pressure to the throat or windpipe, use of maneuvers that restrict blood or oxygen flow to the brain, or carotid artery restraints which prevent or hinder breathing or reduce intake of air is a punishment, pain, or penalty."

SEC. 364. PEACE ACT.

(a) SHORT TITLE.—This section may be cited as the "Police Exercising Absolute Care With Everyone Act of 2020" or the "PEACE Act of 2020".

(b) USE OF FORCE BY FEDERAL LAW ENFORCEMENT OFFICERS.—

(1) DEFINITIONS.—In this subsection:

(A) DEESCALATION TACTICS AND TECHNIQUES.—The term "deescalation tactics and techniques" means proactive actions and approaches used by a Federal law enforcement officer to stabilize the situation so that more time, options, and resources are available to gain a person's voluntary compliance and reduce or eliminate the need to use force, including verbal persuasion, warnings, tactical tech-
niques, slowing down the pace of an incident, waiting out a subject, creating distance between the officer and the threat, and requesting additional resources to resolve the incident.

(B) NECESSARY.—The term “necessary” means that another reasonable Federal law enforcement officer would objectively conclude, under the totality of the circumstances, that there was no reasonable alternative to the use of force.

(C) REASONABLE ALTERNATIVES.—

(i) IN GENERAL.—The term “reasonable alternatives” means tactics and methods used by a Federal law enforcement officer to effectuate an arrest that do not unreasonably increase the risk posed to the law enforcement officer or another person, including verbal communication, distance, warnings, deescalation tactics and techniques, tactical repositioning, and other tactics and techniques intended to stabilize the situation and reduce the immediacy of the risk so that more time, options, and resources can be called upon to resolve the situation without the use of force.
(ii) **DEADLY FORCE.**—With respect to the use of deadly force, the term "reasonable alternatives" includes the use of less lethal force.

(D) **TOTALITY OF THE CIRCUMSTANCES.**—The term "totality of the circumstances" means all credible facts known to the Federal law enforcement officer leading up to and at the time of the use of force, including the actions of the person against whom the Federal law enforcement officer uses such force and the actions of the Federal law enforcement officer.

(2) **PROHIBITION ON LESS LETHAL FORCE.**—A Federal law enforcement officer may not use any less lethal force unless—

(A) the form of less lethal force used is necessary and proportional in order to effectuate an arrest of a person who the officer has probable cause to believe has committed a criminal offense; and

(B) reasonable alternatives to the use of the form of less lethal force have been exhausted.
(3) Prohibition on deadly use of force.—
A Federal law enforcement officer may not use
deadly force against a person unless—

(A) the form of deadly force used is nec-
ecessary, as a last resort, to prevent imminent
and serious bodily injury or death to the officer
or another person;

(B) the use of the form of deadly force cre-
ates no substantial risk of injury to a third per-
son; and

(C) reasonable alternatives to the use of
the form of deadly force have been exhausted.

(4) Requirement to give verbal warn-
ing.—When feasible, prior to using force against a
person, a Federal law enforcement officer shall iden-
tify himself or herself as a Federal law enforcement
officer, and issue a verbal warning to the person
that the Federal law enforcement officer seeks to ap-
prehend, which shall—

(A) include a request that the person sur-
render to the law enforcement officer; and

(B) notify the person that the law enforce-
ment officer will use force against the person if
the person resists arrest or flees.
(5) **Guidance on Use of Force.**—Not later than 120 days after the date of enactment of this Act, the Attorney General, in consultation with impacted persons, communities, and organizations, including representatives of civil and human rights organizations, victims of police use of force, and representatives of law enforcement associations, shall provide guidance to Federal law enforcement agencies on—

(A) the types of less lethal force and deadly force that are prohibited under paragraphs (2) and (3); and

(B) how a Federal law enforcement officer can—

(i) assess whether the use of force is appropriate and necessary; and

(ii) use the least amount of force when interacting with—

(I) pregnant individuals;

(II) children and youth under 21 years of age;

(III) elderly persons;

(IV) persons with mental, behavioral, or physical disabilities or impairments;
(V) persons experiencing perceptual or cognitive impairments due to use of alcohol, narcotics, hallucinogens, or other drugs;

(VI) persons suffering from a serious medical condition; and

(VII) persons with limited English proficiency.

(6) **Training.**—The Attorney General shall provide training to Federal law enforcement officers on interacting people described in subclauses (I) through (VII) of paragraph (5)(B)(ii).

(7) **Limitation on Justification Defense.**—

(A) **In General.**—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

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§ 1123. Limitation on justification defense for Federal law enforcement officers

“(a) **In General.**—It is not a defense to an offense under section 1111 or 1112 that the use of less lethal force or deadly force by a Federal law enforcement officer was justified if—
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“(1) that officer’s use of use of such force was inconsistent with section 364(b) of the George Floyd Justice in Policing Act of 2020; or

“(2) that officer’s gross negligence, leading up to and at the time of the use of force, contributed to the necessity of the use of such force.

“(b) DEFINITIONS.—In this section—

“(1) the terms ‘deadly force’ and ‘less lethal force’ have the meanings given such terms in section 2 and section 364 of the George Floyd Justice in Policing Act of 2020; and

“(2) the term ‘Federal law enforcement officer’ has the meaning given such term in section 115.”.

(B) CLERICAL AMENDMENT.—The table of sections for chapter 51 of title 18, United States Code, is amended by inserting after the item relating to section 1122 the following:

“1123. Limitation on justification defense for Federal law enforcement officers.”.

(c) LIMITATION ON THE RECEIPT OF FUNDS UNDER THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM.—

(1) LIMITATION.—A State or unit of local government, other than an Indian Tribe, may not receive funds that the State or unit of local government would otherwise receive under a Byrne grant
program for a fiscal year if, on the day before the 
first day of the fiscal year, the State or unit of local 
government does not have in effect a law that is con-
sistent with subsection (b) of this section and section 
1123 of title 18, United States Code, as determined 
by the Attorney General.

(2) SUBSEQUENT ENACTMENT.—

(A) IN GENERAL.—If funds described in 
paragraph (1) are withheld from a State or unit 
of local government pursuant to paragraph (1) 
for 1 or more fiscal years, and the State or unit 
of local government enacts or puts in place a 
law described in paragraph (1), and dem-
onstrates substantial efforts to enforce such 
law, subject to subparagraph (B), the State or 
unit of local government shall be eligible, in the 
fiscal year after the fiscal year during which the 
State or unit of local government demonstrates 
such substantial efforts, to receive the total 
amount that the State or unit of local govern-
ment would have received during each fiscal 
year for which funds were withheld.

(B) LIMIT ON AMOUNT OF PRIOR YEAR 
FUNDS.—A State or unit of local government 
may not receive funds under subparagraph (A)
in an amount that is more than the amount
withheld from the State or unit of local govern-
ment during the 5-fiscal-year period before the
fiscal year during which funds are received
under subparagraph (A).

(3) GUIDANCE.—Not later than 120 days after
the date of enactment of this Act, the Attorney Gen-
eral, in consultation with impacted persons, commu-
nities, and organizations, including representatives
of civil and human rights organizations, individuals
against whom a law enforcement officer used force,
and representatives of law enforcement associations,
shall make guidance available to States and units of
local government on the criteria that the Attorney
General will use in determining whether the State or
unit of local government has in place a law described
in paragraph (1).

(4) APPLICATION.—This subsection shall apply
to the first fiscal year that begins after the date that
is 1 year after the date of the enactment of this Act,
and each fiscal year thereafter.

SEC. 365. STOP MILITARIZING LAW ENFORCEMENT ACT.

(a) FINDINGS.—Congress makes the following find-
ings:
(1) Under section 2576a of title 10, United States Code, the Department of Defense is authorized to provide excess property to local law enforcement agencies. The Defense Logistics Agency, administers such section by operating the Law Enforcement Support Office program.

(2) New and used material, including mine-resistant ambush-protected vehicles and weapons determined by the Department of Defense to be "military grade" are transferred to Federal, Tribal, State, and local law enforcement agencies through the program.

(3) As a result local law enforcement agencies, including police and sheriff's departments, are acquiring this material for use in their normal operations.

(4) As a result of the wars in Iraq and Afghanistan, military equipment purchased for, and used in, those wars has become excess property and has been made available for transfer to local and Federal law enforcement agencies.

(5) In Fiscal Year 2017, $504,000,000 worth of property was transferred to law enforcement agencies.
(6) More than $6,800,000,000 worth of weapons and equipment have been transferred to police organizations in all 50 States and four territories through the program.

(7) In May 2012, the Defense Logistics Agency instituted a moratorium on weapons transfers through the program after reports of missing equipment and inappropriate weapons transfers.

(8) Though the moratorium was widely publicized, it was lifted in October 2013 without adequate safeguards.

(9) On January 16, 2015, President Barack Obama issued Executive Order 13688 to better coordinate and regulate the federal transfer of military weapons and equipment to State, local, and Tribal law enforcement agencies.

(10) In July, 2017, the Government Accountability Office reported that the program's internal controls were inadequate to prevent fraudulent applicants' access to the program.

(12) As a result, Federal, State, and local law enforcement departments across the country are eligible again to acquire free “military-grade” weapons and equipment that could be used inappropriately during policing efforts in which people and taxpayers could be harmed.

(13) The Department of Defense categorizes equipment eligible for transfer under the 1033 program as “controlled” and “un-controlled” equipment. “Controlled equipment” includes weapons, explosives such as flash-bang grenades, mine-resistant ambush-protected vehicles, long-range acoustic devices, aircraft capable of being modified to carry armament that are combat coded, and silencers, among other military grade items.

(b) LIMITATION ON DEPARTMENT OF DEFENSE TRANSFER OF PERSONAL PROPERTY TO LOCAL LAW ENFORCEMENT AGENCIES.—

(1) IN GENERAL.—Section 2576a of title 10, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)(A), by striking “counterdrug, counterterrorism, and border security activities” and inserting “counterterrorism”; and
(ii) in paragraph (2), by striking ",
the Director of National Drug Control Pol-
icy;",
(B) in subsection (b)—
(i) in paragraph (5), by striking
"and" at the end;
(ii) in paragraph (6), by striking the
period and inserting a semicolon; and
(iii) by adding at the end the fol-
lowing new paragraphs:
"(7) the recipient submits to the Department of
Defense a description of how the recipient expects to
use the property;
"(8) the recipient certifies to the Department of
Defense that if the recipient determines that the
property is surplus to the needs of the recipient, the
recipient will return the property to the Department
of Defense;
"(9) with respect to a recipient that is not a
Federal agency, the recipient certifies to the Depart-
ment of Defense that the recipient notified the local
community of the request for personal property
under this section by—
"(A) publishing a notice of such request on
a publicly accessible Internet website;
“(B) posting such notice at several prominent locations in the jurisdiction of the recipient; and

“(C) ensuring that such notices were available to the local community for a period of not less than 30 days; and

“(10) the recipient has received the approval of the city council or other local governing body to acquire the personal property sought under this section.”;

(C) by striking subsection (d);

(D) by redesignating subsections (e) and (f) as subsections (o) and (p), respectively; and

(E) by inserting after subsection (c) the following new subsections:

“(d) ANNUAL CERTIFICATION ACCOUNTING FOR TRANSFERRED PROPERTY.—(1) For each fiscal year, the Secretary shall submit to Congress certification in writing that each Federal or State agency to which the Secretary has transferred property under this section—

“(A) has provided to the Secretary documentation accounting for all controlled property, including arms and ammunition, that the Secretary has transferred to the agency, including any item described in subsection (f) so transferred before the date of the
enactment of the George Floyd Justice in Policing
Act of 2020; and

“(B) with respect to a non-Federal agency, car-
ried out each of paragraphs (5) through (8) of sub-
section (b).

“(2) If the Secretary does not provide a certification
under paragraph (1) for a Federal or State agency, the
Secretary may not transfer additional property to that
agency under this section.

“(e) Annual Report on Excess Property.—Be-
fore making any property available for transfer under this
section, the Secretary shall annually submit to Congress
a description of the property to be transferred together
with a certification that the transfer of the property would
not violate this section or any other provision of law.

“(f) Limitations on Transfers.—(1) The Sec-
retary may not transfer to Federal, Tribal, State, or local
law enforcement agencies the following under this section:

“(A) Firearms, ammunition, bayonets, grenade
launchers, grenades (including stun and flash-bang),
and explosives.

“(B) Vehicles, except for passenger automobiles
(as such term is defined in section 32901(a)(18) of
title 49, United States Code) and bucket trucks.

“(C) Drones.
“(D) Controlled aircraft that—

“(i) are combat configured or combat coded; or

“(ii) have no established commercial flight application.

“(E) Silencers.

“(F) Long-range acoustic devices.

“(G) Items in the Federal Supply Class of banned items.

“(2) The Secretary may not require, as a condition of a transfer under this section, that a Federal or State agency demonstrate the use of any small arms or ammunition.

“(3) The limitations under this subsection shall also apply with respect to the transfer of previously transferred property of the Department of Defense from one Federal or State agency to another such agency.

“(4)(A) The Secretary may waive the applicability of paragraph (1) to a vehicle described in subparagraph (B) of such paragraph (other than a mine-resistant ambush-protected vehicle), if the Secretary determines that such a waiver is necessary for disaster or rescue purposes or for another purpose where life and public safety are at risk, as demonstrated by the proposed recipient of the vehicle.
“(B) If the Secretary issues a waiver under subparagraph (A), the Secretary shall—

“(i) submit to Congress notice of the waiver, and post such notice on a public Internet website of the Department, by not later than 30 days after the date on which the waiver is issued; and

“(ii) require, as a condition of the waiver, that the recipient of the vehicle for which the waiver is issued provides public notice of the waiver and the transfer, including the type of vehicle and the purpose for which it is transferred, in the jurisdiction where the recipient is located by not later than 30 days after the date on which the waiver is issued.

“(5) The Secretary may provide for an exemption to the limitation under subparagraph (D) of paragraph (1) in the case of parts for aircraft described in such subparagraph that are transferred as part of regular maintenance of aircraft in an existing fleet.

“(6) The Secretary shall require, as a condition of any transfer of property under this section, that the Federal or State agency that receives the property shall return the property to the Secretary if the agency—

“(A) is investigated by the Department of Justice for any violation of civil liberties; or
“(B) is otherwise found to have engaged in widespread abuses of civil liberties.

“(g) CONDITIONS FOR EXTENSION OF PROGRAM.—Notwithstanding any other provision of law, amounts authorized to be appropriated or otherwise made available for any fiscal year may not be obligated or expended to carry out this section unless the Secretary submits to Congress certification that for the preceding fiscal year that—

“(1) each Federal or State agency that has received controlled property transferred under this section has—

“(A) demonstrated 100 percent accountability for all such property, in accordance with paragraph (2) or (3), as applicable; or

“(B) been suspended from the program pursuant to paragraph (4);

“(2) with respect to each non-Federal agency that has received controlled property under this section, the State coordinator responsible for each such agency has verified that the coordinator or an agent of the coordinator has conducted an in-person inventory of the property transferred to the agency and that 100 percent of such property was accounted for during the inventory or that the agency has been
suspended from the program pursuant to paragraph (4);

“(3) with respect to each Federal agency that has received controlled property under this section, the Secretary of Defense or an agent of the Secretary has conducted an in-person inventory of the property transferred to the agency and that 100 percent of such property was accounted for during the inventory or that the agency has been suspended from the program pursuant to paragraph (4);

“(4) the eligibility of any agency that has received controlled property under this section for which 100 percent of the property was not accounted for during an inventory described in paragraph (1) or (2), as applicable, to receive any property transferred under this section has been suspended; and

“(5) each State coordinator has certified, for each non-Federal agency located in the State for which the State coordinator is responsible that—

“(A) the agency has complied with all requirements under this section; or

“(B) the eligibility of the agency to receive property transferred under this section has been suspended; and
“(6) the Secretary of Defense has certified, for each Federal agency that has received property under this section that—

“(A) the agency has complied with all requirements under this section; or

“(B) the eligibility of the agency to receive property transferred under this section has been suspended.

“(h) Prohibition on Ownership of Controlled Property.—A Federal or State agency that receives controlled property under this section may not take ownership of the property.

“(i) Notice to Congress of Property Downgrades.—Not later than 30 days before downgrading the classification of any item of personal property from controlled or Federal Supply Class, the Secretary shall submit to Congress notice of the proposed downgrade.

“(j) Notice to Congress of Property Cannibalization.—Before the Defense Logistics Agency authorizes the recipient of property transferred under this section to cannibalize the property, the Secretary shall submit to Congress notice of such authorization, including the name of the recipient requesting the authorization, the purpose of the proposed cannibalization, and the type of property proposed to be cannibalized.
“(k) Quarterly Reports on Use of Controlled Equipment.—Not later than 30 days after the last day of a fiscal quarter, the Secretary shall submit to Congress a report on any uses of controlled property transferred under this section during that fiscal quarter.

“(l) Reports to Congress.—Not later than 30 days after the last day of a fiscal year, the Secretary shall submit to Congress a report on the following for the preceding fiscal year:

“(1) The percentage of equipment lost by recipients of property transferred under this section, including specific information about the type of property lost, the monetary value of such property, and the recipient that lost the property.

“(2) The transfer of any new (condition code A) property transferred under this section, including specific information about the type of property, the recipient of the property, the monetary value of each item of the property, and the total monetary value of all such property transferred during the fiscal year.”.

(2) Effective Date.—The amendments made by paragraph (1) shall apply with respect to any transfer of property made after the date of the enactment of this Act.
SEC. 366. PUBLIC SAFETY INNOVATION GRANTS.

(a) Byrne Grants Used for Local Task Forces on Public Safety Innovation.—Section 501(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151(a)), as amended by this Act, is further amended by adding at the end the following:

"(3) Local Task Forces on Public Safety Innovation.—"

"(A) In General.—A law enforcement program under paragraph (1)(A) may include the development of best practices for and the creation of local task forces on public safety innovation, charged with exploring and developing new strategies for public safety, including non-law enforcement strategies.

"(B) Definition.—The term 'local task force on public safety innovation' means an administrative entity, created from partnerships between community-based organizations and other local stakeholders, that may develop innovative law enforcement and non-law enforcement strategies to enhance just and equitable public safety, repair breaches of trust between law enforcement agencies and the community they pledge to serve, and enhance accountability of law enforcement officers."
(b) Crisis Intervention Teams.—Section 501(c) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10152(c)) is amended by adding at the end the following:

“(3) In the case of crisis intervention teams funded under subsection (a)(1)(H), a program assessment under this subsection shall contain a report on best practices for crisis intervention.”.

(c) Use of COPS Grant Program to Hire Law Enforcement Officers Who Are Residents of the Communities They Serve.—Section 1701(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10381(b)), as amended by this Act, is further amended—

(1) by redesignating paragraphs (23) and (24) as paragraphs (26) and (27), respectively;

(2) in paragraph (26), as so redesignated, by striking “(22)” and inserting “(25)”;

(3) by inserting after paragraph (22) the following:

“(23) to recruit, hire, incentivize, retain, develop, and train new, additional career law enforcement officers or current law enforcement officers who are willing to relocate to communities—
“(A) where there are poor or fragmented relationships between police and residents of the community, or where there are high incidents of crime; and

“(B) that are the communities that the law enforcement officers serve, or that are in close proximity to the communities that the law enforcement officers serve;

“(24) to collect data on the number of law enforcement officers who are willing to relocate to the communities where they serve, and whether such law enforcement officer relocations have impacted crime in such communities;

“(25) to develop and publicly report strategies and timelines to recruit, hire, promote, retain, develop, and train a diverse and inclusive law enforcement workforce, consistent with merit system principles and applicable law;”.

Subtitle C—Law Enforcement Body Cameras

PART 1—FEDERAL POLICE CAMERA AND ACCOUNTABILITY ACT

SEC. 371. SHORT TITLE.

This part may be cited as the “Federal Police Camera and Accountability Act”.
SEC. 372. REQUIREMENTS FOR FEDERAL LAW ENFORCEMENT OFFICERS REGARDING THE USE OF BODY CAMERAS.

(a) DEFINITIONS.—In this section:

(1) MINOR.—The term "minor" means any individual under 18 years of age.

(2) SUBJECT OF THE VIDEO FOOTAGE.—The term "subject of the video footage"—

(A) means any identifiable Federal law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording; and

(B) does not include people who only incidentally appear on the recording.

(3) VIDEO FOOTAGE.—The term "video footage" means any images or audio recorded by a body camera.

(b) REQUIREMENT TO WEAR BODY CAMERA.—

(1) IN GENERAL.—Federal law enforcement officers shall wear a body camera.

(2) REQUIREMENT FOR BODY CAMERA.—A body camera required under paragraph (1) shall—

(A) have a field of view at least as broad as the officer’s vision; and
(B) be worn in a manner that maximizes
the camera's ability to capture video footage of
the officer's activities.

(c) REQUIREMENT TO ACTIVATE.—

(1) IN GENERAL.—Both the video and audio re-
cording functions of the body camera shall be acti-
vated whenever a Federal law enforcement officer is
responding to a call for service or at the initiation
of any other law enforcement or investigative stop
(as such term is defined in section 373) between a
Federal law enforcement officer and a member of
the public, except that when an immediate threat to
the officer's life or safety makes activating the cam-
era impossible or dangerous, the officer shall acti-
vate the camera at the first reasonable opportunity
to do so.

(2) ALLOWABLE DEACTIVATION.—The body
camera shall not be deactivated until the stop has
fully concluded and the Federal law enforcement of-
icer leaves the scene.

(d) NOTIFICATION OF SUBJECT OF RECORDING.—A
Federal law enforcement officer who is wearing a body
camera shall notify any subject of the recording that he
or she is being recorded by a body camera as close to the
inception of the stop as is reasonably possible.
(e) REQUIREMENTS.—Notwithstanding subsection (c), the following shall apply to the use of a body camera:

(1) Prior to entering a private residence without a warrant or in non-exigent circumstances, a Federal law enforcement officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer's body camera. If the occupant responds affirmatively, the Federal law enforcement officer shall immediately discontinue use of the body camera.

(2) When interacting with an apparent crime victim, a Federal law enforcement officer shall, as soon as practicable, ask the apparent crime victim if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime victim responds affirmatively, the Federal law enforcement officer shall immediately discontinue use of the body camera.

(3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a Federal law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer’s body camera. If
the person seeking to remain anonymous responds affirmatively, the Federal law enforcement officer shall immediately discontinue use of the body camera.

(f) RECORDING OF OFFERS TO DISCONTINUE USE OF BODY CAMERA.—Each offer of a Federal law enforcement officer to discontinue the use of a body camera made pursuant to subsection (e), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

(g) LIMITATIONS ON USE OF BODY CAMERA.—Body cameras shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative stop between a law enforcement officer and a member of the public, and shall not be equipped with or employ any facial recognition technologies.

(h) EXCEPTIONS.—Federal law enforcement officers—

(1) shall not be required to use body cameras during investigative or enforcement stops with the public in the case that—
(A) recording would risk the safety of a confidential informant, citizen informant, or undercover officer;

(B) recording would pose a serious risk to national security; or

(C) the officer is a military police officer, a member of the United States Army Criminal Investigation Command, or a protective detail assigned to a Federal or foreign official while performing his or her duties; and

(2) shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health.

(i) RETENTION OF FOOTAGE.—

(1) IN GENERAL.—Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for 6 months after the date it was recorded, after which time such footage shall be permanently deleted.

(2) RIGHT TO INSPECT.—During the 6-month retention period described in paragraph (1), the following persons shall have the right to inspect the body camera footage:
(A) Any person who is a subject of body camera video footage, and their designated legal counsel.

(B) A parent or legal guardian of a minor subject of body camera video footage, and their designated legal counsel.

(C) The spouse, next of kin, or legally authorized designee of a deceased subject of body camera video footage, and their designated legal counsel.

(D) A Federal law enforcement officer whose body camera recorded the video footage, and their designated legal counsel, subject to the limitations and restrictions in this part.

(E) The superior officer of a Federal law enforcement officer whose body camera recorded the video footage, subject to the limitations and restrictions in this part.

(F) Any defense counsel who claims, pursuant to a written affidavit, to have a reasonable basis for believing a video may contain evidence that exculpates a client.

(3) LIMITATION.—The right to inspect subject to subsection (j)(1) shall not include the right to possess a copy of the body camera video footage, un-
less the release of the body camera footage is other-
wise authorized by this part or by another applicable
law. When a body camera fails to capture some or
all of the audio or video of an incident due to mal-
function, displacement of camera, or any other
cause, any audio or video footage that is captured
shall be treated the same as any other body camera
audio or video footage under this part.

(j) ADDITIONAL RETENTION REQUIREMENTS.—Not-
withstanding the retention and deletion requirements in
subsection (i), the following shall apply to body camera
video footage under this part:

(1) Body camera video footage shall be auto-
matically retained for not less than 3 years if the
video footage captures an interaction or event involv-
ing—

(A) any use of force; or

(B) an stop about which a complaint has
been registered by a subject of the video foot-
age.

(2) Body camera video footage shall be retained
for not less than 3 years if a longer retention period
is voluntarily requested by—

(A) the Federal law enforcement officer
whose body camera recorded the video footage,
if that officer reasonably asserts the video footage has evidentiary or exculpatory value in an ongoing investigation;

(B) any Federal law enforcement officer who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

(C) any superior officer of a Federal law enforcement officer whose body camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary or exculpatory value;

(D) any Federal law enforcement officer, if the video footage is being retained solely and exclusively for police training purposes;

(E) any member of the public who is a subject of the video footage;

(F) any parent or legal guardian of a minor who is a subject of the video footage; or

(G) a deceased subject’s spouse, next of kin, or legally authorized designee.

(k) Public Review.—For purposes of subparagraphs (E), (F), and (G) of subsection (j)(2), any member of the public who is a subject of video footage, the parent
or legal guardian of a minor who is a subject of the video
footage, or a deceased subject’s next of kin or legally au-
thorized designee, shall be permitted to review the specific
video footage in question in order to make a determination
as to whether they will voluntarily request it be subjected
to a minimum 3-year retention period.

(l) DISCLOSURE.—

(1) IN GENERAL.—Except as provided in para-
graph (2), all video footage of an interaction or
event captured by a body camera, if that interaction
or event is identified with reasonable specificity and
requested by a member of the public, shall be pro-
vided to the person or entity making the request in
accordance with the procedures for requesting and
providing government records set forth in the section
552a of title 5, United States Code.

(2) EXCEPTIONS.—The following categories of
video footage shall not be released to the public in
the absence of express written permission from the
non-law enforcement subjects of the video footage:

(A) Video footage not subject to a min-
imum 3-year retention period pursuant to sub-
section (j).

(B) Video footage that is subject to a min-
imum 3-year retention period solely and exclu-
sively pursuant to paragraph (1)(B) or (2) of subsection (j).

(3) PRIORITY OF REQUESTS.—Notwithstanding any time periods established for acknowledging and responding to records requests in section 552a of title 5, United States Code, responses to requests for video footage that is subject to a minimum 3-year retention period pursuant to subsection (j)(1)(A), where a subject of the video footage is recorded being killed, shot by a firearm, or grievously injured, shall be prioritized and, if approved, the requested video footage shall be provided as expeditiously as possible, but in no circumstances later than 5 days following receipt of the request.

(4) USE OF REDACTION TECHNOLOGY.—

(A) IN GENERAL.—Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person’s voice, provided the redaction does not interfere with a viewer’s ability to fully,
completely, and accurately comprehend the

events captured on the video footage.

(B) REQUIREMENTS.—The following re-
quirements shall apply to redactions under sub-
paragraph (A):

(i) When redaction is performed on
video footage pursuant to this paragraph,
an unedited, original version of the video
footage shall be retained pursuant to the
requirements of subsections (i) and (j).

(ii) Except pursuant to the rules for
the redaction of video footage set forth in
this subsection or where it is otherwise ex-
pressly authorized by this Act, no other ed-
iting or alteration of video footage, includ-
ing a reduction of the video footage’s reso-
lution, shall be permitted.

(m) PROHIBITED WITHHOLDING OF FOOTAGE.—
Body camera video footage may not be withheld from the
public on the basis that it is an investigatory record or
was compiled for law enforcement purposes where any per-
son under investigation or whose conduct is under review
is a police officer or other law enforcement employee and
the video footage relates to that person’s conduct in their
official capacity.
(n) ADMISSIBILITY.—Any video footage retained beyond 6 months solely and exclusively pursuant to subsection (j)(2)(D) shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.

(o) CONFIDENTIALITY.—No government agency or official, or law enforcement agency, officer, or official may publicly disclose, release, or share body camera video footage unless—

(1) doing so is expressly authorized pursuant to this part or another applicable law; or

(2) the video footage is subject to public release pursuant to subsection (l), and not exempted from public release pursuant to subsection (l)(1).

(p) LIMITATION ON FEDERAL LAW ENFORCEMENT OFFICER VIEWING OF BODY CAMERA FOOTAGE.—No Federal law enforcement officer shall review or receive an accounting of any body camera video footage that is subject to a minimum 3-year retention period pursuant to subsection (j)(1) prior to completing any required initial reports, statements, and interviews regarding the recorded event, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

(q) ADDITIONAL LIMITATIONS.—Video footage may not be—
(1) in the case of footage that is not subject to a minimum 3-year retention period, viewed by any superior officer of a Federal law enforcement officer whose body camera recorded the footage absent a specific allegation of misconduct; or

(2) divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.

(r) Third Party Maintenance of Footage.—

Where a law enforcement agency authorizes a third party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view, or alter any video footage, except to delete videos as required by law or agency retention policies.

(s) Enforcement.—

(1) In General.—If any Federal law enforcement officer, or any employee or agent of a Federal law enforcement agency fails to adhere to the recording or retention requirements contained in this part, intentionally interferes with a body camera's ability to accurately capture video footage, or otherwise manipulates the video footage captured by a body camera during or after its operation—
(A) appropriate disciplinary action shall be
taken against the individual officer, employee,
or agent;

(B) a rebuttable evidentiary presumption
shall be adopted in favor of a criminal defend-
ant who reasonably asserts that exculpatory evi-
dence was destroyed or not captured; and

(C) a rebuttable evidentiary presumption
shall be adopted on behalf of a civil plaintiff
suing the Government, a Federal law enforce-
ment agency, or a Federal law enforcement offi-
cer for damages based on misconduct who rea-
sonably asserts that evidence supporting their
claim was destroyed or not captured.

(2) Proof Compliance Was Impossible.—
The disciplinary action requirement and rebuttable
presumptions described in paragraph (1) may be
overcome by contrary evidence or proof of exigent
circumstances that made compliance impossible.

(t) Use of Force Investigations.—In the case
that a Federal law enforcement officer equipped with a
body camera is involved in, a witness to, or within viewable
sight range of either the use of force by another law en-
forcement officer that results in a death, the use of force
by another law enforcement officer, during which the dis-
charge of a firearm results in an injury, or the conduct
of another law enforcement officer that becomes the sub-
ject of a criminal investigation—

(1) the law enforcement agency that employs
the law enforcement officer, or the agency or depart-
ment conducting the related criminal investigation,
as appropriate, shall promptly take possession of the
body camera, and shall maintain such camera, and
any data on such camera, in accordance with the ap-
licable rules governing the preservation of evidence;

(2) a copy of the data on such body camera
shall be made in accordance with prevailing forensic
standards for data collection and reproduction; and

(3) such copied data shall be made available to
the public in accordance with subsection (l).

(u) LIMITATION ON USE OF FOOTAGE AS EVI-
DENCE.—Any body camera video footage recorded by a
Federal law enforcement officer that violates this part or
any other applicable law may not be offered as evidence
by any government entity, agency, department, prosecu-
torial office, or any other subdivision thereof in any crimi-
nal or civil action or proceeding against any member of
the public.

(v) PUBLICATION OF AGENCY POLICIES.—Any Fed-
eral law enforcement agency policy or other guidance re-
garding body cameras, their use, or the video footage therefrom that is adopted by a Federal agency or department, shall be made publicly available on that agency’s website.

(w) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to preempt any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.

SEC. 373. PATROL VEHICLES WITH IN-CAR VIDEO RECORDING CAMERAS.

(a) DEFINITIONS.—In this section:

(1) AUDIO RECORDING.—The term “audio recording” means the recorded conversation between a Federal law enforcement officer and a second party.

(2) EMERGENCY LIGHTS.—The term “emergency lights” means oscillating, rotating, or flashing lights on patrol vehicles.

(3) ENFORCEMENT OR INVESTIGATIVE STOP.—The term “enforcement or investigative stop” means an action by a Federal law enforcement officer in relation to enforcement and investigation duties, including traffic stops, pedestrian stops, abandoned vehicle contacts, motorist assists, commercial motor vehicle stops, roadside safety checks, requests for
identification, or responses to requests for emer-
gency assistance.

(4) **IN-CAR VIDEO CAMERA.**—The term "in-car
video camera" means a video camera located in a
patrol vehicle.

(5) **IN-CAR VIDEO CAMERA RECORDING EQUIP-
MENT.**—The term "in-car video camera recording
equipment" means a video camera recording system
located in a patrol vehicle consisting of a camera as-
sembly, recording mechanism, and an in-car video
recording medium.

(6) **RECORDING.**—The term "recording" means
the process of capturing data or information stored
on a recording medium as required under this sec-
tion.

(7) **RECORDING MEDIUM.**—The term "record-
ing medium" means any recording medium for the
retention and playback of recorded audio and video
including VHS, DVD, hard drive, solid state, digital,
or flash memory technology.

(8) **WIRELESS MICROPHONE.**—The term "wire-
less microphone" means a device worn by a Federal
law enforcement officer or any other equipment used
to record conversations between the officer and a
second party and transmitted to the recording equip-
ment.

(b) REQUIREMENTS.—

(1) IN GENERAL.—Each Federal law enforce-
ment agency shall install in-car video camera record-
ing equipment in all patrol vehicles with a recording
medium capable of recording for a period of 10
hours or more and capable of making audio record-
ings with the assistance of a wireless microphone.

(2) RECORDING EQUIPMENT REQUIREMENTS.—
In-car video camera recording equipment with a re-
cording medium capable of recording for a period of
10 hours or more shall record activities—

(A) whenever a patrol vehicle is assigned
to patrol duty;

(B) outside a patrol vehicle whenever—

(i) a Federal law enforcement officer
assigned that patrol vehicle is conducting
an enforcement or investigative stop;

(ii) patrol vehicle emergency lights are
activated or would otherwise be activated if
not for the need to conceal the presence of
law enforcement; or

(iii) an officer reasonably believes re-
cording may assist with prosecution, en-
hance safety, or for any other lawful pur-
pose; and

(C) inside the vehicle when transporting an
arrestee or when an officer reasonably believes
recording may assist with prosecution, enhance
safety, or for any other lawful purpose.

(3) REQUIREMENTS FOR RECORDING.—

(A) IN GENERAL.—A Federal law enforce-
ment officer shall begin recording for an en-
forcement or investigative stop when the officer
determines an enforcement stop is necessary
and shall continue until the enforcement action
has been completed and the subject of the en-
forcement or investigative stop or the officer
has left the scene.

(B) ACTIVATION WITH LIGHTS.—A Fed-
eral law enforcement officer shall begin record-
ing when patrol vehicle emergency lights are ac-
tivated or when they would otherwise be acti-
vated if not for the need to conceal the presence
of law enforcement, and shall continue until the
reason for the activation ceases to exist, regard-
less of whether the emergency lights are no
longer activated.
(C) PERMISSIBLE RECORDING.—A Federal law enforcement officer may begin recording if the officer reasonably believes recording may assist with prosecution, enhance safety, or for any other lawful purpose; and shall continue until the reason for recording ceases to exist.

(4) ENFORCEMENT OR INVESTIGATIVE STOPS.—A Federal law enforcement officer shall record any enforcement or investigative stop. Audio recording shall terminate upon release of the violator and prior to initiating a separate criminal investigation.

(c) RETENTION OF RECORDINGS.—Recordings made on in-car video camera recording medium shall be retained for a storage period of at least 90 days. Under no circumstances shall any recording made on in-car video camera recording medium be altered or erased prior to the expiration of the designated storage period. Upon completion of the storage period, the recording medium may be erased and reissued for operational use unless otherwise ordered or if designated for evidentiary or training purposes.

(d) ACCESSIBILITY OF RECORDINGS.—Audio or video recordings made pursuant to this section shall be available under the applicable provisions of section 552a of title 5,
United States Code. Only recorded portions of the audio
recording or video recording medium applicable to the re-
quest will be available for inspection or copying.

(e) MAINTENANCE REQUIRED.—The agency shall en-
sure proper care and maintenance of in-car video camera
recording equipment and recording medium. An officer op-
erating a patrol vehicle must immediately document and
notify the appropriate person of any technical difficulties,
failures, or problems with the in-car video camera record-
ing equipment or recording medium. Upon receiving no-
tice, every reasonable effort shall be made to correct and
repair any of the in-car video camera recording equipment
or recording medium and determine if it is in the public
interest to permit the use of the patrol vehicle.

SEC. 374. FACIAL RECOGNITION TECHNOLOGY.
No camera or recording device authorized or required
to be used under this part may be equipped with or employ
facial recognition technology, and footage from such a
camera or recording device may not be subjected to facial
recognition technology.

SEC. 375. GAO STUDY.
Not later than 1 year after the date of enactment
of this Act, the Comptroller General of the United States
shall conduct a study on Federal law enforcement officer
training, vehicle pursuits, use of force, and interaction
with citizens, and submit a report on such study to—

(1) the Committees on the Judiciary of the
House of Representatives and of the Senate;
(2) the Committee on Oversight and Reform of
the House of Representatives; and
(3) the Committee on Homeland Security and
Governmental Affairs of the Senate.

SEC. 376. REGULATIONS.
Not later than 6 months after the date of the enact-
ment of this Act, the Attorney General shall issue such
final regulations as are necessary to carry out this part.

SEC. 377. RULE OF CONSTRUCTION.
Nothing in this part shall be construed to impose any
requirement on a Federal law enforcement officer outside
of the course of carrying out that officer’s duty.

PART 2—POLICE CAMERA ACT

SEC. 381. SHORT TITLE.
This part may be cited as the “Police Creating Ac-
countability by Making Effective Recording Available Act
of 2020” or the “Police CAMERA Act of 2020”.

SEC. 382. LAW ENFORCEMENT BODY-WORN CAMERA RE-
QUIREMENTS.
(a) USE OF FUNDS REQUIREMENT.—Section 502(a)
of title I of the Omnibus Crime Control and Safe Streets
Act of 1968 (34 U.S.C. 10153(a)), as amended by section 334, is amended by adding at the end the following:

“(10) An assurance that, for each fiscal year covered by an application, the applicant will use not less than 5 percent of the total amount of the grant award for the fiscal year to develop policies and protocols in compliance with part OO.”.

(b) REQUIREMENTS.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 et seq.) is amended by adding at the end the following:

“PART OO—LAW ENFORCEMENT BODY-WORN CAMERAS AND RECORDED DATA

“SEC. 3051. USE OF GRANT FUNDS.

“(a) IN GENERAL.—Grant amounts described in paragraph (10) of section 502(a) of this title—

“(1) shall be used—

“(A) to purchase or lease body-worn cameras for use by State, local, and tribal law enforcement officers (as defined in section 2503);

“(B) for expenses related to the implementation of a body-worn camera program in order to deter excessive force, improve accountability and transparency of use of force by law enforcement officers, assist in responding to com-
plaints against law enforcement officers, and

improve evidence collection; and

“(C) to implement policies or procedures to comply with the requirements described in subsection (b); and

“(2) may not be used for expenses related to fac-
cial recognition technology.

“(b) REQUIREMENTS.—A recipient of a grant under subpart 1 of part E of this title shall—

“(1) establish policies and procedures in accord-
ance with the requirements described in subsection (c) before law enforcement officers use of body-worn cameras;

“(2) adopt recorded data collection and reten-
tion protocols as described in subsection (d) before law enforcement officers use of body-worn cameras;

“(3) make the policies and protocols described in paragraphs (1) and (2) available to the public; and

“(4) comply with the requirements for use of recorded data under subsection (f).

“(c) REQUIRED POLICIES AND PROCEDURES.—A re-
cipient of a grant under subpart 1 of part E of this title shall—
“(1) develop with community input and publish
for public view policies and protocols for—

“(A) the safe and effective use of body-

worn cameras;

“(B) the secure storage, handling, and de-

struction of recorded data collected by body-

worn cameras;

“(C) protecting the privacy rights of any
individual who may be recorded by a body-worn

camera;

“(D) the release of any recorded data col-
lected by a body-worn camera in accordance

with the open records laws, if any, of the State;

and

“(E) making recorded data available to
prosecutors, defense attorneys, and other offi-
cers of the court in accordance with subpara-

graph (E); and

“(2) conduct periodic evaluations of the security
of the storage and handling of the body-worn camera
data.

“(d) Recorded Data Collection and Reten-
tion Protocol.—The recorded data collection and reten-
tion protocol described in this paragraph is a protocol
that—
“(1) requires—

“(A) a law enforcement officer who is wearing a body-worn camera to provide an explanation if an activity that is required to be recorded by the body-worn camera is not recorded;

“(B) a law enforcement officer who is wearing a body-worn camera to obtain consent to be recorded from a crime victim or witness before interviewing the victim or witness;

“(C) the collection of recorded data unrelated to a legitimate law enforcement purpose be minimized to the greatest extent practicable;

“(D) the system used to store recorded data collected by body-worn cameras to log all viewing, modification, or deletion of stored recorded data and to prevent, to the greatest extent practicable, the unauthorized access or disclosure of stored recorded data;

“(E) any law enforcement officer be prohibited from accessing the stored data without an authorized purpose; and

“(F) the law enforcement agency to collect and report statistical data on—
“(i) incidences of use of force, disaggregated by race, ethnicity, gender, and age of the victim;

“(ii) the number of complaints filed against law enforcement officers;

“(iii) the disposition of complaints filed against law enforcement officers;

“(iv) the number of times camera footage is used for evidence collection in investigations of crimes; and

“(v) any other additional statistical data that the Director determines should be collected and reported;

“(2) allows an individual to file a complaint with a law enforcement agency relating to the improper use of body-worn cameras; and

“(3) complies with any other requirements established by the Director.

“(e) REPORTING.—Statistical data required to be collected under subsection (d)(1)(D) shall be reported to the Director, who shall—

“(1) establish a standardized reporting system for statistical data collected under this program; and

“(2) establish a national database of statistical data recorded under this program.
“(f) USE OR TRANSFER OF RECORDED DATA.—

“(1) IN GENERAL.—Recorded data collected by an entity receiving a grant under a grant under subpart 1 of part E of this title from a body-worn camera shall be used only in internal and external investigations of misconduct by a law enforcement agency or officer, if there is reasonable suspicion that a recording contains evidence of a crime, or for limited training purposes. The Director shall establish rules to ensure that the recorded data is used only for the purposes described in this paragraph.

“(2) PROHIBITION ON TRANSFER.—Except as provided in paragraph (3), an entity receiving a grant under subpart 1 of part E of this title may not transfer any recorded data collected by the entity from a body-worn camera to another law enforcement or intelligence agency.

“(3) EXCEPTIONS.—

“(A) CRIMINAL INVESTIGATION.—An entity receiving a grant under subpart 1 of part E of this title may transfer recorded data collected by the entity from a body-worn camera to another law enforcement agency or intelligence agency for use in a criminal investigation if the requesting law enforcement or intelligence agen-
cy has reasonable suspicion that the requested
data contains evidence relating to the crime
being investigated.

"(B) CIVIL RIGHTS CLAIMS.—An entity re-
ceiving a grant under subpart 1 of part E of
this title may transfer recorded data collected
by the law enforcement agency from a body-
worn camera to another law enforcement agen-
cy for use in an investigation of the violation of
any right, privilege, or immunity secured or
protected by the Constitution or laws of the
United States.

"(g) AUDIT AND ASSESSMENT.—

"(1) IN GENERAL.—Not later than 2 years
after the date of enactment of this part, the Director
of the Office of Audit, Assessment, and Management
shall perform an assessment of the use of funds
under this section and the policies and protocols of
the grantees.

"(2) REPORTS.—Not later than September 1 of
each year, beginning 2 years after the date of enact-
ment of this part, each recipient of a grant under
subpart 1 of part E of this title shall submit to the
Director of the Office of Audit, Assessment, and
Management a report that—
“(A) describes the progress of the body-

worn camera program; and

“(B) contains recommendations on ways in

which the Federal Government, States, and

units of local government can further support

the implementation of the program.

“(3) REVIEW.—The Director of the Office of

Audit, Assessment, and Management shall evaluate

the policies and protocols of the grantees and take

such steps as the Director of the Office of Audit, As-

sessment, and Management determines necessary to

ensure compliance with the program.

“SEC. 3052. BODY-WORN CAMERA TRAINING TOOLKIT.

“(a) IN GENERAL.—The Director shall establish and

maintain a body-worn camera training toolkit for law en-

forcement agencies, academia, and other relevant entities

to provide training and technical assistance, including best

practices for implementation, model policies and proce-

dures, and research materials.

“(b) MECHANISM.—In establishing the toolkit re-

quired to under subsection (a), the Director may consoli-

date research, practices, templates, and tools that been de-

veloped by expert and law enforcement agencies across the

country.
SEC. 3053. STUDY.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of the Police CAMERA Act of 2020, the Director shall conduct a study on—

(1) the efficacy of body-worn cameras in deterring excessive force by law enforcement officers;

(2) the impact of body-worn cameras on the accountability and transparency of the use of force by law enforcement officers;

(3) the impact of body-worn cameras on responses to and adjudications of complaints of excessive force;

(4) the effect of the use of body-worn cameras on the safety of law enforcement officers on patrol;

(5) the effect of the use of body-worn cameras on public safety;

(6) the impact of body-worn cameras on evidence collection for criminal investigations;

(7) issues relating to the secure storage and handling of recorded data from the body-worn cameras;

(8) issues relating to the privacy of individuals and officers recorded on body-worn cameras;

(9) issues relating to the constitutional rights of individuals on whom facial recognition technology is used;
“(10) issues relating to limitations on the use of facial recognition technology;

“(11) issues relating to the public’s access to body-worn camera footage;

“(12) the need for proper training of law enforcement officers that use body-worn cameras;

“(13) best practices in the development of protocols for the safe and effective use of body-worn cameras;

“(14) a review of law enforcement agencies that found body-worn cameras to be unhelpful in the operations of the agencies; and

“(15) any other factors that the Director determines are relevant in evaluating the efficacy of body-worn cameras.

“(b) REPORT.—Not later than 180 days after the date on which the study required under subsection (a) is completed, the Director shall submit to Congress a report on the study, which shall include any policy recommendations that the Director considers appropriate.”.
TITLE IV— CLOSING THE LAW ENFORCEMENT CONSENT LOOPHOLE

SEC. 401. SHORT TITLE.

This title may be cited as the “Closing the Law Enforcement Consent Loophole Act of 2019”.

SEC. 402. PROHIBITION ON ENGAGING IN SEXUAL ACTS WHILE ACTING UNDER COLOR OF LAW.

(a) IN GENERAL.—Section 2243 of title 18, United States Code, is amended—

(1) in the section heading, by adding at the end the following: “or by any person acting under color of law”;

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(3) by inserting after subsection (b) the following:

“(c) OF AN INDIVIDUAL BY ANY PERSON ACTING UNDER COLOR OF LAW.—

“(1) IN GENERAL.—Whoever, acting under color of law, knowingly engages in a sexual act with an individual, including an individual who is under arrest, in detention, or otherwise in the actual custody of any Federal law enforcement officer, shall be
fined under this title, imprisoned not more than 15
years, or both.

“(2) DEFINITION.—In this subsection, the term
‘sexual act’ has the meaning given the term in sec-
tion 2246.”; and

(4) in subsection (d), as so redesignated, by
adding at the end the following:

“(3) In a prosecution under subsection (c), it is not
a defense that the other individual consented to the sexual
act.”.

(b) DEFINITION.—Section 2246 of title 18, United
States Code, is amended—

(1) in paragraph (5), by striking “and” at the
end;

(2) in paragraph (6), by striking the period at
the end and inserting “; and”; and

(3) by inserting after paragraph (6) the fol-
lowing:

“(7) the term ‘Federal law enforcement officer’
has the meaning given the term in section 115.”.

(c) CLERICAL AMENDMENT.—The table of sections
for chapter 109A of title 18, United States Code, is
amended by amending the item related to section 2243
to read as follows:

“2243. Sexual abuse of a minor or ward or by any person acting under color
of law.”.
SEC. 403. ENACTMENT OF LAWS PENALIZING ENGAGING IN

SEXUAL ACTS WHILE ACTING UNDER COLOR

OF LAW.

(a) IN GENERAL.—Beginning in the first fiscal year
that begins after the date that is one year after the date
of enactment of this Act, in the case of a State or unit
of local government that does not have in effect a law de-
scribed in subsection (b), if that State or unit of local gov-
ernment that would otherwise receive funds under the
COPS grant program, that State or unit of local govern-
ment shall not be eligible to receive such funds. In the
case of a multi-jurisdictional or regional consortium, if any
member of that consortium is a State or unit of local gov-
ernment that does not have in effect a law described in
subsection (b), if that consortium would otherwise receive
funds under the COPS grant program, that consortium
shall not be eligible to receive such funds.

(b) DESCRIPTION OF LAW.—A law described in this
subsection is a law that—

(1) makes it a criminal offense for any person
acting under color of law of the State or unit of local
government to engage in a sexual act with an indi-
vidual, including an individual who is under arrest,
in detention, or otherwise in the actual custody of
any law enforcement officer; and
(2) prohibits a person charged with an offense described in paragraph (1) from asserting the consent of the other individual as a defense.

(c) REPORTING REQUIREMENT.—A State or unit of local government that receives a grant under the COPS grant program shall submit to the Attorney General, on an annual basis, information on—

(1) the number of reports made to law enforcement agencies in that State or unit of local government regarding persons engaging in a sexual act while acting under color of law during the previous year; and

(2) the disposition of each case in which sexual misconduct by a person acting under color of law was reported during the previous year.

SEC. 404. REPORTS TO CONGRESS.

(a) REPORT BY ATTORNEY GENERAL.—Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Attorney General shall submit to Congress a report containing—

(1) the information required to be reported to the Attorney General under section 403(b); and

(2) information on—

(A) the number of reports made, during the previous year, to Federal law enforcement
agencies regarding persons engaging in a sexual
act while acting under color of law; and
(B) the disposition of each case in which
sexual misconduct by a person acting under
color of law was reported.

(b) REPORT BY GAO.—Not later than 1 year after
the date of enactment of this Act, and each year there-
after, the Comptroller General of the United States shall
submit to Congress a report on any violations of section
2243(c) of title 18, United States Code, as amended by
section 402, committed during the 1-year period covered
by the report.

SEC. 405. DEFINITION.

In this title, the term “sexual act” has the meaning
given the term in section 2246 of title 18, United States
Code.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. SEVERABILITY.

If any provision of this Act, or the application of such
a provision to any person or circumstance, is held to be
unconstitutional, the remainder of this Act and the appli-
cation of the remaining provisions of this Act to any per-
son or circumstance shall not be affected thereby.
SEC. 502. SAVINGS CLAUSE.

Nothing in this Act shall be construed—


(2) to affect any Federal, State, or Tribal law that applies to an Indian Tribe because of the political status of the Tribe; or

(3) to waive the sovereign immunity of an Indian Tribe without the consent of the Tribe.


Attest:

Clerk.
To hold law enforcement accountable for mis-

AN ACT

H.R. 7120

116TH CONGRESS

2D SESSION
Item B-3
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: July 10, 2020
SUBJECT: AB 1022 (Holden) - Peace Officers: Use of Force
ATTACHMENTS: 1. Summary Memo – AB 1022
2. Bill Text – AB 1022

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

AB 1022 (Holden) - Peace Officers: Use of Force (AB 1022) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwi Schmelzer & Lange, provided a summary memo for AB 1022 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1022, the Liaisons may recommend the following actions:

1) Support AB 1022;
2) Support if amended AB 1022;
3) Oppose AB 1022;
4) Oppose unless amended AB 1022;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1022, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 5, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
       Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
       Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 1022 (Holden) Peace officers: use of force

Introduced Version
As introduced on February 21, 2019, this bill was authored by Assemblymember Wicks and would have established the California Anti-Hunger Response and Employment Training (CARET) Act of 2019.

The bill was gutted and amended on June 29, 2020, to delete Assemblymember Wicks from the bill, add Assemblymember Holden as the lead author, and delete the entire original policy content from the bill.

Summary
According to Assemblymember Holden, AB 1022 has been introduced in the wake of the killing of George Floyd at the hands of a Minneapolis police officer. The Assemblymember argues this bill would establish clear guidelines for police accountability and responsibility while demonstrating a duty to intervene and report when witnessing an excessive use of force by another member of law enforcement. Specifically, AB 1022 (Holden) would:

- Define “Excessive force” as a level of force that is not reasonably believed to be proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

- Establish a definition for “Intercede”, that includes but is not limited to, physically stopping the excessive use of force, recording the excessive force and documenting efforts to intervene, efforts to deescalate the offending officer’s excessive use of force, and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty and stating the offending officer’s name, unit, location, time and situation, in order to establish a duty for that officer to intervene.
• Define “Retaliation” as demotion, failure to promote to a higher position when warranted by merit; denial of access to training and professional development opportunities; denial of access to resources necessary for an officer to properly perform their duties; or intimidation, harassment, or the threat of injury while on duty or off duty.

• Specify that a peace officer’s “Duty to Intercede” shall include, but is not limited to, physically stopping the excessive use of force, recording the excessive force, and reporting the incident in real time to dispatch or the watch commander on duty in order to establish that officer has attempted to intervene.

• Prohibit an officer from training other officers for a one year period if an abuse of force complaint is substantiated.

• Disqualify a person from holding office as a peace officer if, on three separate occasions, the person was found by a law enforcement agency that employs them to have either used excessive force or failed to intercede.

• Specify that a peace officer who is present and observes another peace officer using excessive force, and willfully fails to intercede, shall be deemed a principal in any crime committed by the other officer during the use of excessive force.

• Require law enforcement policies on the use of force to include procedures for disclosing public records of peace officers, as specified to be made available via internet search.

**Discussion**
Existing law requires each law enforcement agency, on or before January 1, 2021, to maintain a policy that provides a minimum standard on the use of force. That policy must, among other things, require that officers report potential excessive force to a superior officer when present and observing another officer using force that is clearly beyond that which is necessary, as specified. These policies must also include procedures for disclosing public records of peace officers, and to include procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.

On June 19, 2020, the California Legislative Black Caucus (CLBC) announced an expansion of their 2020 legislative package in the wake of the murder of George Floyd and the worldwide outcry for police reform.

"The events in recent weeks have highlighted the ongoing problems of excessive policing in communities of color, overreaction to peaceful protests, unwarranted use of deadly force and lack of accountability for officer misconduct. These cyclical patterns undermine the public's confidence in law enforcement's ability to keep us safe. In some cases, we are convinced that they have abandoned the essential public trust altogether to pursue an agenda of intimidation, brutality and curbside executions. The reform measures we introduced are necessary steps toward restoring that lost confidence. The CLBC has a legacy of pursuing policies that ensure public safety means safety for everyone," said Assemblymember Shirley N. Weber, Chair of the CLBC.

The author argues that currently, California law requires that an officer intercede when present and observing another officer using force that is beyond that which is necessary, as determined by an
objectively reasonable officer under the circumstances. However, current law does not indicate universal measures used to establish that an officer has in fact interceded. In the case of George Floyd, a lawyer for one of the accused junior officers argues that because the junior officer asked the supervising officer if they should turn Floyd on his side that was intervention.

Note: The League of California Cities currently has a ‘Watch’ position on this bill.

**Status of Legislation**
This bill is currently pending in the Senate Committee on Public Safety.

**Support**
None reported at this time

**Opposition**
None reported at this time
Attachment 2
An act to add Chapter 10.5 (commencing with Section 18946) to Part 6 of Division 9 of the Welfare and Institutions Code, relating to CalFresh; amend Sections 1029 and 7286 of the Government Code, and to add Section 34 to the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL’S DIGEST


Existing law requires each law enforcement agency, on or before January 1, 2021, to maintain a policy that provides a minimum standard on the use of force. Existing law requires that policy, among other things, to require that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be unnecessary, and to require that officers
intercede when present and observing another officer using force that is clearly beyond that which is necessary, as specified.

This bill would require those law enforcement policies to require those officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force. The bill would define excessive force as a level of force that is not reasonably believed to be proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance. The bill would additionally require those policies to, among other things, prohibit retaliation against officers that report violations of law or regulation of another officer to a supervisor, as specified, and to require that an officer who fails to intercede be disciplined in the same manner as the officer who used excessive force.

By imposing additional duties on local agencies, this bill would create a state-mandated local program.

Existing law requires the law enforcement policies on use of force to include procedures for disclosing public records of peace officers, as specified, and to include procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.

This bill would require those law enforcement policies to also include an internet website that makes specified public records of peace officers available in a form searchable by each officer’s name, and to include an internet website that allows members of the public to file citizen complaints, as specified. By imposing additional duties on local agencies, this bill would create a state-mandated local program.

Existing law disqualifies specified persons from being a peace officer, including, among others, any person convicted of a felony.

This bill would also disqualify a person from being a peace officer if they have, on three separate occasions, been found by a law enforcement agency that employees them to have either used excessive force or to have failed to intercede as required by a law enforcement agency’s policies.

Existing law makes all persons concerned in the commission of a crime, whether they directly commit the act constituting the offense, or aid and abet in its commission, principals in that crime.

This bill would make a peace officer who is present and observes another peace officer using excessive force, and willfully fails to intercede as required by the policy of their employing law enforcement, a principal in any crime committed by the other officer during the use
of excessive force. By creating a new crime, this bill would create 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Existing federal law establishes the Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county.

Existing federal law limits a participant who is an able-bodied adult without dependents (ABAWD) to 3 months of CalFresh benefits in a 3-year period unless that participant has met work participation requirements or is otherwise exempt. Existing federal law authorizes a waiver of that time limit upon the request of a state if it is determined that the area in which the individuals reside has an unemployment rate of over 10% or does not have a sufficient number of jobs to provide employment for the individuals. Existing state law requires the State Department of Social Services, to the extent permitted by federal law, to annually seek a federal waiver of the time limit. Existing federal law also authorizes a state to provide, in each fiscal year, an exemption from the 3-month time limit for covered individuals, to the extent that the average monthly number of exemptions in effect during a fiscal year does not exceed 15% of the number of covered individuals in the state.

Existing law authorizes counties to participate in the CalFresh Employment and Training (CalFresh E&T) program, established by federal law, and requires a participating county to demonstrate in its CalFresh E&T plan how it is effectively using CalFresh E&T funds for each of the components that the county offers, including work experience or training and job search.

This bill would require the department to establish the California Antihunger Response and Employment Training (CARET) program to provide benefits to a person who has been determined ineligible for CalFresh benefits, or for whom CalFresh benefits have been
discontinued, as a result of the ABAWD time limit, and who also is ineligible for a percentage exemption, as specified. The bill would require that the person receive the same amount of benefits under the CARET program that they would have received under the CalFresh program if the ABAWD time limit did not make them ineligible. The bill would also make a CARET program recipient eligible for CalFresh E&T program benefits, and would make a CalFresh E&T provider serving a CARET recipient eligible to draw down a state-funded reimbursement in the same amount that the provider would have been eligible to receive for allowable CalFresh E&T services for a CalFresh recipient. The bill would require the issuance of CARET benefits through a state-administered and state-funded electronic benefits transfer system, as specified.

The bill would require the department to develop, in consultation with specified entities, and to issue, guidance to maximize the use of percentage exemptions from the 3-month time limit available under federal law and guidance relating to SNAP. The bill would authorize the guidance to include redistribution of percentage exemptions between counties, as specified. The bill would require the guidance to be issued no later than April 1, 2020, and to remain operative until the CARET program is operative.

To the extent that the bill would expand eligibility for county-administered benefits through the establishment of the CARET program, the 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.


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

1. SECTION 1. Section 1029 of the Government Code is amended to read:
2. 1029. (a) Except as provided in subdivision (b), (c), or (d), each of the following persons is disqualified from holding office
as a peace officer or being employed as a peace officer of the state, county, city, city and county or other political subdivision, whether with or without compensation, and is disqualified from any office or employment by the state, county, city, city and county or other political subdivision, whether with or without compensation, which confers upon the holder or employee the powers and duties of a peace officer:

(1) Any person who has been convicted of a felony.

(2) Any person who has been convicted of any offense in any other jurisdiction which would have been a felony if committed in this state.

(3) Any person who, after January 1, 2004, has been convicted of a crime based upon a verdict or finding of guilt of a felony by the trier of fact, or upon the entry of a plea of guilty or nolo contendere to a felony. This paragraph shall apply regardless of whether, pursuant to subdivision (b) of Section 17 of the Penal Code, the court declares the offense to be a misdemeanor or the offense becomes a misdemeanor by operation of law.

(4) Any person who has been charged with a felony and adjudged by a superior court to be mentally incompetent under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code.

(5) Any person who has been found not guilty by reason of insanity of any felony.

(6) Any person who has been determined to be a mentally disordered sex offender pursuant to Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(7) Any person adjudged addicted or in danger of becoming addicted to narcotics, convicted, and committed to a state institution as provided in Section 3051 of the Welfare and Institutions Code.

(8) Any person who, on three separate occasions, been found by a law enforcement agency that employs them to have either used excessive force, as defined in Section 7286, or to have failed to intercede as required pursuant to paragraph (9) of subdivision (b) of Section 7286.

(b) (1) A plea of guilty to a felony pursuant to a deferred entry of judgment program as set forth in Sections 1000 to 1000.4, inclusive, of the Penal Code shall not alone disqualify a person
from being a peace officer unless a judgment of guilty is entered pursuant to Section 1000.3 of the Penal Code.

(2) A person who pleads guilty or nolo contendere to, or who is found guilty by a trier of fact of, an alternate felony-misdemeanor drug possession offense and successfully completes a program of probation pursuant to Section 1210.1 of the Penal Code shall not be disqualified from being a peace officer solely on the basis of the plea or finding if the court deems the offense to be a misdemeanor or reduces the offense to a misdemeanor.

(c) Any person who has been convicted of a felony, other than a felony punishable by death, in this state or any other state, or who has been convicted of any offense in any other state which would have been a felony, other than a felony punishable by death, if committed in this state, and who demonstrates the ability to assist persons in programs of rehabilitation may hold office and be employed as a parole officer of the Department of Corrections or the Department of the Youth Authority, or as a probation officer in a county probation department, if he or she the person has been granted a full and unconditional pardon for the felony or offense of which he or she the person was convicted. Notwithstanding any other provision of law, the Department of Corrections or the Department of the Youth Authority, or a county probation department, may refuse to employ that person regardless of his or her that person’s qualifications.

(d) Nothing in this section shall be construed to limit or curtail the power or authority of any board of police commissioners, chief of police, sheriff, mayor, or other appointing authority to appoint, employ, or deputize any person as a peace officer in time of disaster caused by flood, fire, pestilence or similar public calamity, or to exercise any power conferred by law to summon assistance in making arrests or preventing the commission of any criminal offense.

(e) Nothing in this section shall be construed to prohibit any person from holding office or being employed as a superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department, if at the time of the person’s hire a prior conviction of a felony was known to the person’s employer, and the class of office for which the person was hired was not declared by law to be a class prohibited to persons convicted of a felony, but as a result of a change in
classification, as provided by law, the new classification would
prohibit employment of a person convicted of a felony.

SEC. 2. Section 7286 of the Government Code is amended to
read:

7286. (a) For the purposes of this section:
(1) “Deadly force” means any use of force that creates a
substantial risk of causing death or serious bodily injury. Deadly
force includes, but is not limited to, the discharge of a firearm.
(2) “Excessive force” means a level of force that is not
reasonably believed to be proportional to the seriousness of the
suspected offense or the reasonably perceived level of actual or
threatened resistance.
(2)
(3) “Feasible” means reasonably capable of being done or
carried out under the circumstances to successfully achieve the
arrest or lawful objective without increasing risk to the officer or
another person.
(4) “Intervene” includes, but is not limited to, physically
stopping the excessive use of force, recording the excessive force
and documenting efforts to intervene, efforts to deescalate the
offending officer’s excessive use of force, and confronting the
offending officer about the excessive force during the use of force
and, if the officer continues, reporting to dispatch or the watch
commander on duty and stating the offending officer’s name, unit,
location, time and situation, in order to establish a duty for that
officer to intervene.
(4)
(5) “Law enforcement agency” means any police department,
sheriff’s department, district attorney, county probation department,
transit agency police department, school district police department,
the police department of any campus of the University of
California, the California State University, or community college,
the Department of the California Highway Patrol, the Department
of Fish and Wildlife, and the Department of Justice.
(6) “Retaliation” means demotion, failure to promote to a higher
position when warranted by merit, denial of access to training and
professional development opportunities, denial of access to
resources necessary for an officer to properly perform their duties,
or intimidation, harassment, or the threat of injury while on duty
or off duty.
(b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a minimum standard on the use of force. Each agency’s policy shall include all of the following:

1. A requirement that officers utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible.
2. A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.
3. A requirement that officers immediately report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
4. A prohibition on retaliation against an officer that reports a suspected violation of a law or regulation of another officer to a supervisor or other person of the law enforcement agency who has the authority to investigate the violation.
5. Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.
6. A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.
7. Procedures for disclosing public records in accordance with Section 832.7. These procedures shall include a public internet website that includes the information made public pursuant to subdivision (b) of Section 832.7, in a form that is searchable by the officer’s name.
8. Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents. These procedures shall include a public internet website that allows members of the public to file citizen complaints and receive a
confirmation number along with the date and time the complaint was received and a hyperlink that allows the member of the public to check the status of their complaint.

(8) A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject. excessive force.

(9) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.

(10) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.

(11) Comprehensive and specific guidelines for the application of deadly force.

(12) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2.

(13) The role of supervisors in the review of use of force applications.

(14) A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.

(15) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency’s use of force policy by officers, investigators, and supervisors.

(16) Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who
are pregnant, and people with physical, mental, and developmental disabilities.

(18) Procedures to prohibit an officer from training other officers for a period of one year from the date that an abuse of force complaint against the officer is substantiated.

(19) A requirement that an officer that has received all required training on the requirement to intercede and fails to act pursuant to paragraph (9) be disciplined in the same manner as the officer that committed the excessive force.

(17)

(20) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

(18)

(21) Factors for evaluating and reviewing all use of force incidents.

(19)

(22) Minimum training and course titles required to meet the objectives in the use of force policy.

(20)

(23) A requirement for the regular review and updating of the policy to reflect developing practices and procedures.

(c) Each law enforcement agency shall make their use of force policy adopted pursuant to this section accessible to the public.

(d) This section does not supersede the collective bargaining procedures established pursuant to the Myers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4), the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4), or the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4).

SEC. 3. Section 34 is added to the Penal Code, to read:

34. A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is present and observes another peace officer using excessive force, as defined in Section 7286 of the Government Code, and willfully fails to intercede as required by the policy of their employing law enforcement agency adopted pursuant to Section 7286 of the Government Code, is a principal in any crime committed by the other officer during the use of excessive force.
SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SECTION 1. This act shall be known, and may be referred to, as the California Antihunger Response and Employment Training Act of 2019.

SEC. 2. The Legislature finds and declares all of the following:
(a) One in eight Californians suffers from food insecurity.
(b) The federal Supplemental Nutrition Assistance Program (SNAP), known as CalFresh in California, is the most important defense against hunger, helping millions of Californians prevent hunger and its long-term consequences.
(c) SNAP not only helps prevent hunger among low income households, as it also creates jobs and supports our food economy across the state.
(d) The Secretary of Food and Agriculture and the Secretary of California Health and Human Services sent the California congressional delegation a letter asking that they prioritize policies that reduce hunger, such as eliminating the able-bodied adult without dependents (ABAWD) time limit, in the upcoming reauthorization of SNAP through the 2018 Farm Bill.
(e) Instead, the 2018 Farm Bill, signed by the President of the United States on December 20, 2018, included a provision that will reduce the number of individual waivers available for people who will lose benefits as a result of the ABAWD time limit, and the Trump Administration has proposed regulations to further reduce protections to low-income, out-of-work, and underemployed people subject to the time limit.
(f) Hunger never makes any person better able to prepare for work, secure a job, or succeed at their place of employment. It only makes them, and our economy, weaker and less able to persevere during hard times.

(g) In addition, cutting low-income Californians from CalFresh disconnects them from CalFresh Employment and Training programs, which can help them reduce barriers to unemployment and gain new skills that increase their employability and likelihood of their future economic success.

(h) California will provide funding to serve low-income, out-of-work, underemployed, and job seeking Californians who are impacted by this ill conceived federal law.

SEC. 3. Chapter 10.5 (commencing with Section 18946) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 10.5. CALIFORNIA ANTIHUNGER RESPONSE AND EMPLOYMENT TRAINING PROGRAM

18946. (a) The State Department of Social Services shall establish the California Antihunger Response and Employment Training (CARET) program for persons described in subdivision (b).

(b) A person who has been determined ineligible for CalFresh benefits, or for whom CalFresh benefits have been discontinued, as a result of the federal able-bodied adult without dependents (ABAWD) time limit, and who also is ineligible for a percentage exemption, shall receive benefits under the CARET program.

(c) A person described in subdivision (b) shall receive CARET benefits in the same amount as the CalFresh benefits they would have received if the ABAWD time limit did not make them ineligible.

(d) A CARET program recipient shall also be eligible for the same CalFresh Employment and Training (CalFresh E&T) program benefits described in Section 18926.5 that the recipient would have been eligible for if the ABAWD time limit did not make the recipient ineligible for CalFresh benefits.

(e) A CalFresh E&T provider serving a CARET recipient shall be eligible to draw down a state funded reimbursement in the same
amount that the provider would have been eligible to receive for
allowable CalFresh E&T services for a CalFresh recipient.

(f) (1) Benefits issued pursuant to this chapter shall be issued
through a state–administered and state–funded electronic benefits
transfer system that is subject to the standards established in
Section 10072:

(2) The electronic benefits transfer system used to issue CARE
benefits may also be used to issue other state–funded food
assistance benefits.

(g) This chapter applies only if federal law and guidance prohibit
the state from retaining an exemption allocated pursuant to Section
273.24(g) of Title 7 of the Code of Federal Regulations for use in
a later month.

SEC. 4. (a) The State Department of Social Services shall
issue guidance to maximize the use of percentage exemptions
available under federal law and guidance relating to the federal
Supplemental Nutrition Assistance Program.

(b) The department shall develop the guidance in consultation
with the Office of Systems Integration, county human services
agencies, public benefit recipient advocates, representatives of
public benefit caseworkers, and other relevant stakeholders.

(c) The guidance may include redistribution of percentage
exemptions between counties if necessary to maximize the use of
the percentage exemptions to prevent hunger among persons
subject to the federal able–bodied adult without dependents time
limit.

(d) The guidance shall be issued no later than April 1, 2020,
and shall remain operative until the CARET program described
in Section 18946 of the Welfare and Institutions Code is operative.

SEC. 5. If the Commission on State Mandates determines that
this act contains costs mandated by the state, reimbursement to
local agencies and school districts for those costs shall be made
pursuant to Part 7 (commencing with Section 17500) of Division
4 of Title 2 of the Government Code.
Item B-4
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

AB 1196 (Gipson) – Peace Officers: Use of Force (AB 1196) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1196 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1196, the Liaisons may recommend the following actions:

1) Support AB 1196;
2) Support if amended AB 1196;
3) Oppose AB 1196;
4) Oppose unless amended AB 1196;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1196, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 5, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 1196 (Gipson) Peace officers: use of force.

Introduced Version
As introduced on February 21, 2020, this measure was authored by Assemblyman Mike Gipson and co-authored by Assemblywoman Luz Rivas. The introduced version included provisions related to the topic of community schools.

June 18th Amendments
AB 1196 (Gipson) was amended on June 18, 2020, to delete Assemblywoman Luz Rivas from the author line, add five joint authors, two principal co-authors, twenty Assembly co-authors and eight Senate co-authors. The amendments also delete the prior contents of the bill and insert new provisions prohibiting law enforcement agencies from authorizing the use of a carotid restraint or a choke hold, as defined.

Specifically, this bill would:

- Define “Carotid restraint” as a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck for the purpose of restricting blood flow to render the person unconscious or otherwise subdue or control the person.

- Define “Choke hold” as any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.

- Define “Law enforcement agency” as any agency, department, or other entity of the state or any political subdivision thereof, which employs any peace officer described in Section 830 of the California Penal Code et seq.

- Prohibit a law enforcement agency from authorizing the use of a carotid restraint or a choke hold.

- Declare that it is to take effect immediately as an urgency statute.

Current law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. An arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer.
Existing law also authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

AB 1196 was introduced by Assembly Member Gipson and is sponsored by the Alliance of Boys and Men of Color, National Action Network, and PolicyLink. The bill would eliminate the use of chokeholds and carotid artery restraints statewide by law enforcement.

This bill is one of six criminal justice reform bills introduced by the Legislative Black Caucus following the death and George Floyd and the subsequent protests against systemic racism and the use of excessive force by law enforcement officers.

A carotid artery hold is the most widely used type of stranglehold. To perform this hold, an officer bends his or her arm around a subject's neck, applying pressure on either side of the windpipe—but not on the windpipe itself—to slow or stop the flow of blood to the brain via the carotid arteries. It can almost immediately render someone unconscious and has the potential to cause serious injury or death if the flow of blood to the brain is restricted for too long.

Police Departments in several major cities, including San Diego and San Francisco, have already taken steps to prohibit their use; however, statewide policies regarding neck restraints can vary greatly between both departments and agencies.

Note: The League of California Cities currently has a ‘Watch’ position on this bill.

**Status of Legislation**
This bill is pending in the Senate Public Safety Committee.

**Support (based on fact sheet provide by the author)**
| Alliance of Boys and Men of Color (Sponsor) | City of Refuge Church |
| National Action Network (Sponsor) | Compton Unified School District |
| PolicyLink (Sponsor) | County of Los Angeles, Board of Supervisors |
| Alpha Kappa Alpha Sorority –Eta Lambda | Everytown for Gun Safety |
| Omega | LA Regional Re-entry Partnership |
| AFSCME 3299 | Moms Demand Action- CA Chapter |
| Anti-Recidivism Coalition | Organize Win Legislate Sacramento |
| Association of CA Cities Allied with Public Safety | Racial Justice Coalition of San Diego |
| | SURJ- Sacramento |
| CA State Conference- NAACP | Turo |
| CA Association of Black School Educators | University of CA Student Association |
| CA Family Justice Center Network | VCH Prosperity Consulting |
| CA Federation of Teachers | Wiley Manuel Bar Association - Sacramento County |
| CA Natural Gas Vehicle Coalition | 100 Black Men of the Bay Area |
| Charles R. Drew University | 100 Black Men of Long Beach |
| City of Los Angeles, Mayor Eric Garcetti | 100 Black Men of Sacramento |
| City of Los Angeles Human Relations Commission | 100 Black Men of Silicon Valley |
| City of Oakland | 100 Black Women of Silicon Valley |
| City of San Diego | #cut50 |

**Opposition**
There is no formally registered opposition at this time.
Attachment 2
An act to add Chapter 11 (commencing with Section 9100) to Part 6 of Division 1 of Title 1 of the Education Code, Section 7286.5 to the Government Code, relating to community schools, peace officers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST


Existing law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. Under existing law, an arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer. Existing law
authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

This bill would prohibit a law enforcement agency from authorizing the use of a carotid restraint or a choke hold, as defined.

By requiring local agencies to amend use of force policies, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as an urgency statute.

Existing law authorizes a county board of education to establish and maintain one or more county community schools, and authorizes a county board of education to enroll certain pupils in county community schools.

This bill would establish the California Community Schools Act, which would require the State Department of Education to make 3-year grants available to applicant school districts, county offices of education, and charter schools to plan and operate California Community Schools under the program, as provided. The bill would require a grant recipient to establish a community school leadership team and hire a community school coordinator, and would require the community school coordinator, in collaboration with the community school leadership team and others, to conduct a needs and assets assessment at the schoolsite and to develop a community school plan within prescribed timeframes. The bill would require a participating eligible school to first submit the community school plan to the governing board or body of the local educational agency for approval before submitting the community school plan to the department for approval. The bill would require a community school coordinator, in consultation with the
community school leadership team, to submit a report to the governing board or body of the local educational agency and to the department that describes efforts to integrate community school programming at the participating eligible school and the impact of the transition to a community school on participating pupils and adults. The bill would require the department, no later than 18 months after the completion of the 3-year grant program, to report an evaluation on the impact of the act and the grant program to the Department of Finance, the relevant policy and fiscal committees of the Legislature, and the Legislative Analyst. The bill would provide that the act shall be implemented only if funds are appropriated for its purposes by the Legislature in the annual Budget Act or another statute.


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

SECTION 1. Section 7286.5 is added to the Government Code, to read:

7286.5. (a) A law enforcement agency shall not authorize the use of a carotid restraint or choke hold by any peace officer employed by that agency.

(b) As used in this section, the following terms are defined as follows:

(1) "Carotid restraint" means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck for the purpose of restricting blood flow to render the person unconscious or otherwise subdue or control the person.

(2) "Choke hold" means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.

(3) "Law enforcement agency" means any agency, department, or other entity of the state or any political subdivision thereof, that employs any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made
pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to promote public safety by ensuring the abolition of law enforcement tactics that may result in unintentional deaths, it is necessary that this act take effect immediately.

All matter omitted in this version of the bill appears in the bill as amended in the Assembly, April 29, 2019. (J R11)
Item B-5
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

AB 1436 (Chiu) - Tenancy: Rental Payment Default: State of Emergency: COVID-19 (AB 1436) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1436 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1436, the Liaisons may recommend the following actions:

1) Support AB 1436;
2) Support if amended AB 1436;
3) Oppose AB 1436;
4) Oppose unless amended AB 1436;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1436, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
June 30, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange  
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange  
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 1436 (Chiu) Tenancy: rental payment default: state of emergency: COVID-19

Introduction Version
As first introduced on February 22, 2019, AB 1436 was a bill authored by Assemblyman Mark Stone that first dealt with foster care and then was amended to deal with the California Work Opportunity and Responsibility to Kids (CalWORKS) program.

June 10th Amendments Create a New Bill (Gut and Amend)
The bill was significantly amended on June 10, 2020, to delete all of the prior contents of the bill, delete Assembly Mark Stone as the author, designate Assemblyman David Chiu as the author, and insert the following new provisions:

- Define “Covered tenant” as a tenant who has provided their landlord a written statement that they have had a loss of income or increased expenses, or both, as a result of the COVID-19 pandemic that has impacted their ability to fully pay rent.  
  Note: Based on this definition, we believe that this bill would apply to commercial and residential tenants. According to staff in Asm Chiu’s office, their intent was to have the bill apply only to residential tenants. They may pursue amendments to clarify this.

- Prohibit a landlord from applying a security deposit or monthly rental payment to the satisfaction of an obligation other than the prospective month’s rent if the obligation accrued during or within 90 days after the termination of a state of emergency related to COVID-19.

- Specify that tenant who failed to pay rent that accrued during that period shall not be deemed to be in default and would prohibit any action for recovery of unpaid rent until 15 months after the state of emergency is terminated.

- Prohibit certain entities, including a housing provider, from using an alleged default in rent that accrued during that period as a negative factor for the purpose of evaluating creditworthiness.

- Provide that a tenant is not guilty of unlawful detainer if the alleged default in payment of rent accrued during, or within 90 days after the termination of, a state of emergency related to COVID-19.

- Require a landlord, in an action to recover a debt arising from an alleged default in rent accrued during that period to submit in the verified complaint or other document submitted
under penalty of perjury the amount of any payments, mortgage forbearance, mortgage forgiveness, or property tax reduction obtained from the lender or local, state, or federal entities to offset, replace, or compensate the creditor for lost rental income, and would require a court to offset the amount of rental payments.

Under this bill, a property owner would be able to enter into a voluntary written agreement with a tenant to recover unpaid rent. However, the agreement cannot exceed the actual amount of the debt, does not include attorney’s fees or costs, late fees, penalties, or interest related to the unpaid rent. The debt owed by the tenant would need to be offset by the amount of any payments, mortgage forbearance, mortgage forgiveness, or property tax reduction obtained from local, state, or federal entities that were provided to the property owner. The agreement also cannot require the tenant to vacate the premises as a condition of satisfying their unpaid rent obligation.

The author points out in support of this measure that one-third of California tenants report an inability to pay rent. He argues that legislative intervention necessary to avoid a wave of evictions and a dramatic increase in homelessness. A survey conducted by the U.S. Census Bureau between May 21-26, 2020, found 33 percent of California renters reported “little to no confidence” in their ability to pay rent in June 2020. The number of people who cannot pay rent is likely to increase as household savings are depleted and federal relief programs wind down. Under current policy, renters would immediately need to come up with all past due rent when a state of emergency order is lifted in order to avoid eviction. This is simply unrealistic while more than one-quarter of California’s workforce remain unemployed.

Opponents to this measure, including the California Apartment Association argue that AB 1436 substantially impairs existing contracts and takes property without compensation in violation of the state and federal constitutions. They argue further that under AB 1436, rental property owners could go years with no rent payments because AB 1436 is linked to state and local emergency proclamations, there is no definitive time that an owner – residential or commercial – can expect to receive any unpaid rent.

**Status of Legislation**
The bill is currently located in the Senate Rules Committee awaiting referral.

**Support**
Western Center on Law and Poverty,
California Rural Legal Assistance Foundation,
Public Advocates,
Public Counsel,
PolicyLink,
Leadership Counsel for Justice and Accountability,
Housing Now!

**Opposition**
California Apartment Association
Attachment 2
Introduced by Assembly Members Chiu, Bonta, Gonzalez, Santiago, and Wicks  
(Coauthors: Assembly Members Kalra, Nazarian, Quirk-Silva, and Luz Rivas)  
(Coauthors: Senators Allen, Durazo, Wieckowski, and Wiener)

February 22, 2019

An act to add Sections 1947.01, 1947.02, and 1947.03 to the Civil Code, and to add Section 1161.6 to the Code of Civil Procedure, relating to tenancy.

LEGISLATIVE COUNSEL’S DIGEST

Existing law regulates specified terms and conditions of tenancies. Existing law authorizes a landlord to demand security at the beginning of a tenancy for residential property and specifies the purposes for which the security may be used, including, among others, compensating the landlord for the tenant’s default in payment of rent.
This bill would prohibit a landlord from applying a security deposit or monthly rental payment for the satisfaction of an obligation other than the prospective month’s rent if the obligation accrued during or within 90 days after the termination of a state of emergency related to COVID-19, except as specified. The obligation must have accrued between the date a state of emergency relating to the COVID-19 pandemic was declared and either April 1, 2021, or 90 days after termination of the state of emergency, whichever is earlier (hereafter “effective time period”), unless the payment or security is specifically designated by the tenant for the obligation. The bill would provide that a tenant covered tenant, as defined, who failed to pay rent that accrued during that effective time period shall not be deemed to be in default and would prohibit any action for recovery of unpaid rent until 12 months after the state of emergency is terminated. The bill would define “covered tenant” as a tenant who is unable to satisfy rent accrued during the effective time period due to a loss of income or increased expenses resulting from COVID-19 and who provides a written statement to that effect to their landlord, as specified. The bill would prohibit certain entities, including a housing provider, from using an alleged default in rent that accrued during the effective time period as a negative factor for the purpose of evaluating creditworthiness or for other specified purposes.

Existing law provides that a tenant is guilty of unlawful detainer if the tenant continues to possess the property without permission of the landlord after the tenant defaults on rent, among other reasons.

This bill would provide that a covered tenant is not guilty of unlawful detainer if the alleged default in payment of rent accrued during or within 90 days after the termination of a state of emergency related to COVID-19 during the effective time period. The bill would require a landlord, in an action to recover a debt arising from an alleged default in rent accrued during the effective time period to submit in the verified complaint or other document submitted under penalty of perjury the amount of any payments, mortgage forbearance, mortgage forgiveness, or property tax reduction obtained from the lender or local, state, or federal entities to offset, replace, or compensate the creditor for lost rental income, and would require a court to offset the amount of rental payments as specified. The bill would require the landlord to affirmatively plead in the complaint that the tenant is not a covered tenant, and would provide the defendant 30 days to respond to the complaint.
The people of the State of California do enact as follows:

SECTION 1. The intent of the Legislature in enacting this act is to provide mortgage forbearance and foreclosure protections to residential rental property owners facing economic impacts due to the COVID-19 crisis.

SECTION 2.

SEC. 2. Section 1947.01 is added to the Civil Code, immediately following Section 1947, to read:

1947.01. (a) Notwithstanding Sections 1947, 1950.5, or any other law, a landlord shall not apply a security deposit or monthly rental payment tendered by that tenant to a satisfaction of an obligation other than the prospective month’s rent if the obligation accrued during, or within 90 days after the termination of, a state of emergency related to COVID-19, during the effective time period unless the payment or security is specifically designated by the tenant in writing to be in satisfaction of the obligation.

(b) Any stipulation, settlement agreement, or other agreement, including a lease agreement, that conflicts with or purports to waive the provisions of this section is prohibited and is void as contrary to public policy.

(c) For purposes of this section, “state of emergency” means a state of emergency officially declared by the state, including, but not limited to, the state of emergency proclamation issued by the Governor on March 4, 2020, or a local emergency declared in the jurisdiction in which the property is located.

(c) For purposes of this section, the following definitions apply:

(1) “Covered tenant” means a tenant who has provided their landlord a written statement that they have had a loss of income or increased expenses, or both, as a result of the COVID-19 pandemic that has impacted their ability to fully pay rent, in accordance with paragraph (1) of subdivision (e) of Section 1161.6 of the Code of Civil Procedure.

(2) “Effective time period” means the time period between the date a state of emergency is initially declared and the earlier of either of the following:

(A) Ninety days after the termination of the state of emergency.
(B) April 1, 2021.

(3) “State of emergency” means an emergency related to the COVID-19 pandemic declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

SEC. 2.

SEC. 3. Section 1947.02 is added to the Civil Code, immediately following Section 1947.01, to read:

1947.02. (a) (1) A covered tenant who failed to perform an obligation to pay rent that accrued during, or within 90 days after the termination of, a state of emergency related to COVID-19 during the effective time period shall not be deemed to be in default of the obligation, and no action to recover unpaid rent may be pursued, until 15 months after the state or local state of emergency is lifted: until 12 months after the effective time period.

(2) For purposes of this section, “state of emergency” means a state of emergency officially declared by the state, including, but not limited to, the state of emergency proclamation issued by the Governor on March 4, 2020, or a local emergency declared in the jurisdiction in which the property is located.

(b) (1) Nothing in this section shall prohibit a landlord from recovering unpaid rent by written agreement with the tenant, provided that the agreement does not exceed the actual amount of the debt, does not attorney’s fees or costs, late fees, penalties, or interest related to the unpaid rent, and the debt is offset by the amount of any payments, mortgage forbearance, mortgage forgiveness, or property tax reduction obtained from local, state, or federal entities that were provided to the landlord to offset, replace, or compensate the landlord for decreased rental income or provided as financial assistance intended to avoid foreclosure of the subject property.

(2) The agreement shall not require the tenant to vacate the premises as a condition of satisfying the unpaid rent obligation.

(3) A landlord shall notify the tenant in writing of their rights under this section before the agreement is signed.

(4) Any agreement with a tenant regarding the payment of rent shall be in writing and shall adhere to the requirements of Section 1632.

(c) A landlord shall not charge a tenant fees assessed for late payment of rent that accrued during the state of emergency or
within 90 days thereafter, effective time period, nor may the landlord charge fees to a tenant for services previously provided by the landlord, as compensation for purported damages for late payment of rent that accrued during the state of emergency or within 90 days thereafter, effective time period. A landlord shall not provide different terms or conditions of tenancy or withhold a service or amenity based on whether a tenant repays or agrees to repay all or any portion of unpaid rent.

(d) A landlord shall not harass, threaten, or seek to intimidate a tenant in order to obtain a tenant’s payment or agreement to pay any portion of unpaid rent or to obtain a tenant’s vacation of the property because of a tenant’s failure to pay rent.

(e) Any stipulation, settlement agreement, or other agreement, including a lease agreement, that conflicts with or purports to waive the provisions of this section is prohibited and is void as contrary to public policy.

(f) For purposes of this section, the terms “covered tenant,” “effective time period,” and “state of emergency” have the definitions provided in Section 1947.01.

SEC. 3.

SEC. 4. Section 1947.03 is added to the Civil Code, immediately following Section 1947.02, to read:

1947.03. (a) A housing provider, credit reporting agency, tenant screening company, or other entity that evaluates tenants on behalf of a housing provider shall not use an alleged default in rent that accrued during, or within 90 days after the termination of, a state of emergency related to COVID-19 during the effective time period as a negative factor for the purpose of evaluating creditworthiness or as the basis for a negative reference to a prospective housing provider, regardless of whether a report is received alleging default in the payment of rent.

(b) For purposes of this section, “state of emergency” means a state of emergency officially declared by the state, including, but not limited to, the state of emergency proclamation issued by the Governor on March 4, 2020, or a local emergency declared in the jurisdiction in which the property is located.

(b) For purposes of this section, the terms “covered tenant,” “effective time period,” and “state of emergency” have the definitions provided in Section 1947.01.
SEC. 4.  
SEC. 5. Section 1161.6 is added to the Code of Civil Procedure, immediately following Section 1161.5, to read:

1161.6. (a) Notwithstanding paragraph (2) of Section 1161, a covered tenant is not guilty of unlawful detainer if the alleged default in payment of rent accrued during, or within 90 days after the termination of, a state of emergency related to COVID-19, during the effective time period. It shall be unlawful to terminate a tenancy in retaliation for a default in rent that is subject to this subdivision. Nothing in this section shall prohibit a landlord from seeking to recover unpaid rent through other civil remedies or by written agreement with the tenant. It shall be unlawful to terminate a tenancy in retaliation for a default in rent that is subject to this subdivision. Any stipulation, settlement agreement, or other agreement, including a lease agreement, that conflicts with or purports to waive the provisions of this subdivision is prohibited and is void as contrary to public policy.

(b) (1) In any action to recover a debt arising from an alleged default in rent that accrued during, or within 90 days after the termination of, a state of emergency related to COVID-19, during the effective time period, the creditor shall set forth in the verified complaint or other document submitted under penalty of perjury the amount of any payments, mortgage forbearance, mortgage forgiveness, or property tax reduction during the relevant time period obtained from any local, state, or federal entity that were provided to the landlord to offset, replace, or compensate the landlord for decreased rental income or provided as financial assistance intended to avoid foreclosure of the subject property. In any judgment on the debt, the court shall offset the amount of these payments by the portion of the financial assistance fairly attributable to the rental unit in question. The defendant may present evidence that the creditor received relief designed to offset debt related to the rental unit in question, and any agreement in satisfaction of such a debt shall be void if it fails to account for receipt of payments described in this section.

(2) In any action described in subdivision (a), the creditor shall not be entitled to recover fees assessed against a tenant for late payment of rent.

(c) For purposes of this section, “state of emergency” means a state of emergency officially declared by the state, including, but
not limited to, the state of emergency proclamation issued by the Governor on March 4, 2020, or a local emergency declared in the jurisdiction in which the property is located.

(c) In any unlawful detainer action based on paragraph (2) of Section 1161 filed within 12 months after the effective time period, the landlord shall be required to affirmatively plead in the complaint that the tenant is not a covered tenant and shall bear the burden of proof that the tenant did not provide the written statement specified in paragraph (1) of subdivision (e).

(d) In any unlawful detainer action based on paragraph (2) of Section 1161 due to nonpayment of rent filed within 12 months after the effective time period, notwithstanding Section 1167, the defendant’s response shall be filed within 30 days.

(e) (1) A tenant who is unable to satisfy all or a portion of the rent that has accrued during the effective time period due to a loss of income or increased expenses resulting from COVID-19 shall provide the following written statement in response to a written demand to cure the default in rent pursuant to paragraph (2) of Section 1161:

I declare that the following is true and correct:
I have had a loss of income and/or increased expenses as a result of the COVID-19 pandemic that has impacted my ability to fully pay the rent.

Signed:
Dated:

(2) The tenant shall provide the notice to their landlord as soon as reasonably practical but may provide the notice any time before judgment is entered.

(3) Any notice served pursuant to paragraph (2) of Section 1161 for an alleged default that occurred during the effective time period shall be accompanied by a document containing the written statement specified in paragraph (1) that the tenant may sign and return to the landlord.

(f) For purposes of this section:
(1) “Covered tenant” means a tenant described in paragraph (1) of subdivision (e) who has provided a written statement to their landlord.

(2) “Effective time period” means the time period between the date a state of emergency is initially declared and the earlier occurrence of either of the following:
(A) Ninety days after the termination of the state of emergency.
(B) April 1, 2021. (3) "State of emergency" means an emergency related to the COVID-19 pandemic declared by the Governor pursuant to the California Emergency Services Act (Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code).

SEC. 5. SEC. 6. The provisions of this bill are severable. If any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
Item B-6
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: July 10, 2020
SUBJECT: AB 1506 (McCarty, Weber, Bradford) – Police Use of Force
ATTACHMENTS: 1. Summary Memo – AB 1506
               2. Bill Text – AB 1506

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

AB 1506 (McCarty, Weber, Bradford) – Police Use of Force (AB 1506) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1506 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1506, the Liaisons may recommend the following actions:

1) Support AB 1506;
2) Support if amended AB 1506;
3) Oppose AB 1506;
4) Oppose unless amended AB 1506;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 1506, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 2, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange  
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange  
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 1506 (McCarty) Police use of force

 Introduced Version
As introduced on February 22, 2020, this bill was jointly authored by Assemblyman McCarty and Assemblyman O’Donnell and included nonsubstantive provisions regarding statewide limits on the number of charter schools.

The bill was amended on June 17, 2020, to delete Assemblyman O’Donnell from the bill, leaving Assemblyman McCarty as the lead author, and delete the entire original policy content from the bill. The June 17 amendments also add 32 new joint authors from the Assembly and 11 principal co-authors from the Senate.

Summary
According to Assemblyman McCarty, AB 1506 has been introduced in the wake of the killing of George Floyd at the hands of a Minneapolis police officer. The Assemblyman argues that this bill would provide independent, accountable, and transparent oversight of police deadly-force. Specifically, AB 1506 (McCarty) would:

- Establish the Statewide Office Deadly Force Investigation Division within the Department of Justice (DOJ) to, upon request of a law enforcement agency or District Attorney, conduct an investigation into an officer-involved deadly-force incident, provide written findings, and if applicable, conduct the prosecution of the officer(s) involved; and

- Establish a Police Practices Division within the DOJ to, upon request, review the “patterns and practices” of a local law enforcement agency, and provide recommendations and action items for improvement.

- Specify that, if no appropriation is made by the Legislature to fund these programs, the programs shall operate using existing Department of Justice funds.

Existing law requires law enforcement agencies to maintain a policy on the use of force and requires the Commission on Peace Officer Standards and Training (POST) to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force. Law enforcement agencies are also required under current law to report to the Department of Justice (DOJ), as specified, any incident in which a peace officer is involved in a shooting or use of force that results in death or serious bodily injury.
**Discussion**
On June 19, 2020, the California Legislative Black Caucus (CLBC) announced an expansion of their 2020 legislative package in the wake of the murder of George Floyd and the worldwide outcry for police reform.

"The events in recent weeks have highlighted the ongoing problems of excessive policing in communities of color, overreaction to peaceful protests, unwarranted use of deadly force and lack of accountability for officer misconduct. These cyclical patterns undermine the public's confidence in law enforcement's ability to keep us safe. In some cases, we are convinced that they have abandoned the essential public trust altogether to pursue an agenda of intimidation, brutality and curbside executions. The reform measures we introduced are necessary steps toward restoring that lost confidence. The CLBC has a legacy of pursuing policies that ensure public safety means safety for everyone," said Assemblymember Shirley N. Weber, Chair of the CLBC.

The author argues that in the wake of the killing of George Floyd at the hands of a Minneapolis police officer, this bill would provide independent, accountable and transparent oversight of police deadly-force. The author argues that AB 1506 is based upon then-CA Attorney General Kamala Harris's 2016 proposal to create three new teams within the DOJ to conduct criminal investigations of officer-involved shootings.

The author argues further that law enforcement audits are equally important to prevent these tragic deaths. In the last few years, local entities including the cities of Sacramento, San Francisco and Vallejo, requested audits by the AG’s office of their law enforcement agencies’ “patterns and practices”.

These audits have been well received and resulted in positive changes based on the AG’s recommendations. These improvements and changes in policy ensure greater protections and safety for police officers and the communities they serve.

**Note:** The League of California Cities currently has a ‘Watch’ position on this bill.

**Status of Legislation**
This bill is currently pending in the Senate Committee on Public Safety.

**Support**
None reported at this time

**Opposition**
None reported at this time
Attachment 2
An act to amend Sections 42649.1, 42649.2, 42649.8, 42649.81, and 42649.82 of the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately; add Section 12525.3 to the Government Code, relating to the Department of Justice.

Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

Existing law requires law enforcement agencies to report to the Department of Justice, as specified, any incident in which a peace officer is involved in a shooting or use of force that results in death or serious bodily injury.

This bill would create a division within the Department of Justice to, upon the request of a law enforcement agency, review the use-of-force policy of the agency and make recommendations, as specified.

The bill would also create a division within the Department of Justice to, upon the request of a law enforcement agency, conduct an independent investigation of any officer-involved shooting or other use of force that resulted in the death of a civilian and would authorize the Department of Justice to criminally prosecute any officer that, pursuant to such an investigation, is found to have violated state law.

The bill would provide that, if no appropriation is made by the Legislature to fund these programs, the programs shall operate using existing Department of Justice funds.

Existing law requires a business that generates 4 cubic yards or more of commercial solid waste or organic waste per week to arrange for recycling services, as specified. Existing law requires a business subject to either of those requirements to provide, on or before July 1, 2020, customers with a recycling bin or container for that waste stream that complies with prescribed requirements. Existing law exempts full-service restaurants, as defined, from the requirement to provide customers with a recycling bin or container if the full-service restaurant, on or before July 1, 2020, provides its employees a recycling bin or container for that waste stream to collect material purchased on the premises and implements a program to collect that waste stream.

This bill would specify that, with respect to a theme park, amusement park, water park, resort or entertainment complex, zoo, attraction, or similar facility that is subject to either of those requirements, the requirement to provide customers with a recycling bin or container only
applies to permanent, nonmobile food service facilities with dedicated seating areas that are not full service restaurants. The bill would authorize such a facility subject to the organic waste recycling services requirement to alternatively implement a process for recycling organic waste from customers that yields results comparable to or greater in volume and quality to results attained by providing an organic waste recycling bin or container. The bill would also make other revisions to these provisions, including revising the definition of “full service restaurant,” as specified, deleting obsolete provisions, and making conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.


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

SECTION 1. Section 12525.3 is added to the Government Code, to read:
12525.3. (a) (1) There is hereby established within the Department of Justice, an independent division to investigate incidents of officer-involved use of force resulting in the death of a civilian.
(2) The division created pursuant to this subdivision shall be known as the Statewide Officer-Involved Deadly Force Investigation Division. The division shall consist of three separate teams: one located in northern California, one in central California, and one in southern California.
(3) The division created pursuant to this subdivision shall do all of the following:
(A) Upon request from a local law enforcement agency or the district attorney, investigate and gather facts in incidents involving the use of force by a peace officer that result in the death of a civilian.
(B) Prepare and submit a written report to the entity requesting the independent review and, as applicable, a copy to the district attorney or law enforcement agency involved. The written report shall include, at a minimum, the following information:
(i) A statement of the facts.
(ii) A detailed analysis and conclusion for each investigatory issue.

(iii) Recommendations to modify the policies and practices of the law enforcement agency, as applicable.

(C) If criminal charges against the involved officer are found to be warranted, initiate and prosecute a criminal action against the officer.

(4) The Attorney General shall post and maintain on the Department of Justice’s internet website each written report prepared by the division pursuant to this subdivision, appropriately redacting any information in the report that is required by law to be kept confidential.

(b) (1) Commencing on July 1, 2023, the Attorney General shall operate a Police Practices Division within the Department of Justice to, upon request of a local law enforcement agency, review the use of deadly force policies of that law enforcement agency.

(2) The program described in this subdivision shall make specific and customized recommendations to any law enforcement agency that requests a review pursuant to this section, based on those policies identified as recommended best practices.

(c) This section does not limit the Attorney General’s authority under the California Constitution or any applicable state law.

(d) If an appropriation is not made by the Legislature to fund this section, the Department of Justice shall implement the requirements of this section using existing department funding.

All matter omitted in this version of the bill appears in the bill as amended in the Assembly, January 15, 2020. (JR11)
Item B-7
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: July 10, 2020

SUBJECT: SB 902 (Wiener) - Planning and Zoning: Housing Development: Density

ATTACHMENTS: 1. Summary Memo – SB 902
                2. Bill Text – SB 902

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

SB 902 (Wiener) - Planning and Zoning: Housing Development: Density (SB 902) involves a policy matter that may not specifically addressed within the adopted Legislative Platform language. Some of the items in the legislative platform which may apply to SB 902 include, but are not limited to:

- Support legislation that preserves local control.
- Support legislation that protects local control over urban planning.
- Oppose state legislation that supersedes a jurisdiction's adopted zoning ordinances.
- Oppose preemption of the City of Beverly Hills' local authority whether by state or federal legislation or ballot propositions.
- Support transparent government and the purpose of the California Public Records Act while simultaneously observing and protecting the current Rule of Law in California including better legislation in regards to protecting the privacy of public records and enhancing laws related to digital records.

The City's state lobbyist, Shaw Yoder Antwich Schmelzer & Lange, provided a summary memo for SB 902 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 902, the Liaisons may recommend the following actions:

1) Support SB 902;
2) Support if amended SB 902;
3) Oppose SB 902;
4) Oppose unless amended SB 902;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 902, then staff will place the item on a future City Council Agenda for concurrence should an adopted City Council priority within the City's Legislative Platform not apply to this bill. Should there be a correlation between the bill and the City’s Legislative Platform, then staff will draft a letter for the Mayor to sign.
Attachment 1
June 29, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quirroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 902 (Wiener) Planning and zoning: housing development: density

Introduction and Background
SB 902 (Wiener) would authorize a local government to pass an ordinance, notwithstanding any local restrictions on adopting zoning ordinances, to zone any parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site, as those terms are defined. In this regard, the bill would require the State Department of Housing and Community Development (HCD), in consultation with the State Office of Planning and Research (OPR), to determine jobs-rich areas and publish a map of those areas every 5 years, commencing January 1, 2022, based on specified criteria.

Specifically, this bill would:

- Define a “transit rich area” as a parcel within one-half mile of a major transit stop or a parcel on a high-quality bus corridor. Define a “high-quality bus corridor” as a corridor with a fixed-route bus service that meets specified service interval times.

- Define a “jobs-rich area” as an area defined by the Department of Housing and Community Development (HCD), in consultation with the Office of Planning and Research (OPR) that is high opportunity and either jobs rich or would enable shorter commuter distances based upon whether, in a regional analysis, the tract meets both of the following requirements:
  - The tract is high opportunity, meaning its characteristics are associated with positive educational and economic outcomes for households of all income levels.
  - The tract meets either of the following criteria:
    - New housing sited on the tract would enable residents to live near more jobs than is typical for tracts in the region.
    - New housing sited in the tract would enable shorter commute distances for residents, relative to existing commute patterns.

- Requires HCD, beginning January 1, 2022, to publish and update, every five years thereafter a map showing “jobs-rich areas.”

- Defines “urban infill” site as a site that satisfies all of the following:
  - A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, or
for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster.

- A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.
- A site that is zoned for residential use or residential mixed-use development or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least 2/3 of the square footage of the development designated for residential use.

- Permit a local government to pass an ordinance, notwithstanding any local restrictions on zoning ordinances, to zone any parcel up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in one of the following:
  - A transit-rich area.
  - A jobs-rich area.
  - An urban infill site.

**Status of Legislation**
This bill is pending referral in the Assembly.

**Support and Opposition**
The author argues that this bill takes a balanced approach to California’s housing crisis.

Supporters point out that SB 902 provides cities with a powerful new streamlining tool, if they choose to take advantage of it, for increasing density in non-sprawl areas to as many as 10 housing units per parcel, and would give flexibility to cities so that they can better utilize planning resources.

Supporters also argue that SB 902 will help ease California’s housing crisis, spurred by a statewide shortage of 3.5 million homes and California ranking 49 out of 50 states in homes per capita. Given that cities face significantly increased housing production goals under the revised Regional Housing Needs Assessment (RHNA) targets, and are required by the state Housing Element Law to complete rezonings to accommodate these goals, proponents argue that SB 902 should be viewed as a very welcome tool.

Opponents to SB 902 object to removing community driven planning processes and stakeholder involvement. Some are opposed to upzoning single-family neighborhoods and are concerned about the lack of affordable housing requirements.

Several labor groups write in opposition to this bill and request worker protections and training standards that include both prevailing wage coverage and skilled and trained workforce requirements so that any unintended consequence that exploits the workforce that will build the housing under this bill is not created. They write that these two requirements would provide middle-class wages and benefits to construction workers and help put local construction workers and apprentices to work.

Note: The League of California Cities currently has a ‘Watch’ position on SB 902 (Wiener).
Support
California YIMBY (co-source)
Habitat for Humanity California (co-source)
350 Sacramento All Home
American Planning Association,
California Chapter Bay Area Council
Bay Area Housing Action Coalition
California Apartment Association
California Building Industry Association
California Community Builders
Central City Association
Chan Zuckerberg Initiative
East Bay for Everyone
Facebook, INC.
Hollywood YIMBY
House Sacramento
League of Women Voters of California
Livable Sunnyvale
Monterey Peninsula Renters United
New Pointe Communities
Non-profit Housing Association of Northern California
North County YIMBY
Peninsula for Everyone
San Francisco Bay Area Planning and Urban Research Association
San Luis Obispo County YIMBY
Santa Cruz YIMBY
Schneider Electric
Silicon Valley At Home
Silicon Valley Community Foundation
South Bay YIMBY
TechEquity Collaborative
The Greenlining Institute
TMG Partners
Ventura County YIMBY
Westside Young Democrats
YIMBY Action
YIMBY Democrats of San Diego County
YIMBY Voice
1 individual

Opposition
A Better Way Forward to House California
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
City of Dublin
City of Livermore
City of Newport Beach
City of Pleasanton
Orange County Council of Governments
New Livable California Dba Livable California
A Better Way Forward to House California
City of Redondo Beach
City of San Ramon
City of Thousand Oaks
International Union of Elevator Constructors, Local 8
International Union of Elevator Constructors, Local 18
Los Angeles County Division, League of California Cities
New Livable California Dba Livable California
Orange County Council of Governments
San Francisco Tenants Union
Sherman Oaks Homeowners Association
South Bay Cities Council of Governments
State Building and Construction Trades Council of CC
Sustainable Tamalmonte
Town of Danville
Town of Hillsborough
Western States Council Sheet Metal, Air, Rail and Transportation
19 Individuals
Attachment 2
An act to add Section 65913.3 to the Government Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST


The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law requires an attached housing development to be a permitted use, not subject to a conditional use permit, on any parcel zoned for multifamily housing if at least certain percentages of the units are available at affordable housing costs to very low income, lower income, and moderate-income households for at least 30 years and if the project meets specified conditions relating to location and being subject to a discretionary decision other than a conditional use permit. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

Existing law, until January 1, 2026, authorizes a development proponent to submit an application for a multifamily housing development that satisfies specified planning objective standards to be subject to a streamlined, ministerial approval process, as provided, and not subject to a conditional use permit.
This bill would provide that a neighborhood multifamily project is a use by right in zones where residential uses are permitted if the project is not located in a very high fire severity zone, does not demolish sound rental housing or housing that has been placed on a national or state historic register, follows specified local objective criteria, and meets specified density requirements. The bill would define use by right to mean that the local government’s review of the housing development may 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 the California Environmental Quality Act (CEQA).

This bill would additionally authorize a local government to pass an ordinance, notwithstanding any local restrictions on adopting zoning ordinances, to zone any parcel for up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site, as those terms are defined. In this regard, the bill would require the Department of Housing and Community Development, in consultation with the Office of Planning and Research, to determine jobs-rich areas and publish a map of those areas every 5 years, commencing January 1, 2022, based on specified criteria. The bill would specify that an ordinance adopted under these provisions is not a project for purposes of CEQA.

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 does not apply to the approval of ministerial projects.

By requiring local planning officials to approve housing developments as a use by right under certain circumstances, this bill would expand the above-described exemption from CEQA for the ministerial approval of projects.
By adding to the duties of local planning officials, this bill would impose a state-mandated local program.

This bill would include findings that 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 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.


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

SECTION 1. Section 65913.3 is added to the Government Code, to read:

65913.3. (a) A neighborhood multifamily project shall be a use by right in zones where residential uses are permitted, if the proposed housing development satisfies all of the following requirements:

(1) The project is not located in a very high fire hazard severity zone;

(2) The project does not demolish sound rental housing or housing that has been placed on a national or state historic register;

(3) The project follows all local objective criteria related to local impact fees, local height and setback limits, and local demolition standards;

(4) The project meets, and does not exceed, one of the following densities:

(A) Two residential units per parcel in unincorporated areas or in cities with a population of 10,000 or fewer people.

(B) Three residential units per parcel in cities with a population between 10,000 and 50,000 people.

(C) Four residential units per parcel in cities with a population of 50,000 or more people.

(b) 65913.3. (a) (1) A local government may pass an ordinance, notwithstanding any local restrictions on adopting zoning ordinances enacted by the jurisdiction, including restrictions
enacted by a local voter initiative, that limit the legislative body’s
ability to adopt zoning ordinances, to zone any parcel for up to 10
units of residential density per parcel, at a height specified by the
local government in the ordinance, if the parcel is located in one
of the following:
(A) A transit-rich area.
(B) A jobs-rich area.
(C) An urban infill site.
(2) An ordinance adopted in accordance with this subdivision
shall not constitute a “project” for purposes of Division 13
(commencing with Section 21000) of the Public Resources Code.
(b) For purposes of this section:
(1) “High-quality bus corridor” means a corridor with fixed
route bus service that meets all of the following criteria:
(A) It has average service intervals of no more than 15 minutes
during the three peak hours between 6 a.m. to 10 a.m., inclusive,
and the three peak hours between 3 p.m. and 7 p.m., inclusive, on
Monday through Friday.
(B) It has average service intervals of no more than 20 minutes
during the hours of 6 a.m. to 10 a.m., inclusive, on Monday through
Friday.
(C) It has average intervals of no more than 30 minutes during
the hours of 8 a.m. to 10 p.m., inclusive, on Saturday and Sunday.
(2) (A) “Jobs-rich area” means an area identified by the
Department of Housing and Community Development in
consultation with the Office of Planning and Research that is high
opportunity and either is jobs rich or would enable shorter commute
distances based on whether, in a regional analysis, the tract meets
both of the following:
(i) The tract is high opportunity, meaning its characteristics are
associated with positive educational and economic outcomes for
households of all income levels residing in the tract.
(ii) The tract meets either of the following criteria:
(iii) New housing sited in the tract would enable residents to
live near more jobs than is typical for tracts in the region.
(iv) New housing sited in the tract would enable shorter
commute distances for residents, relative to existing commute
patterns and jobs-housing fit.
(B) The Department of Housing and Community Development shall, commencing on January 1, 2022, publish and update, every five years thereafter, a map of the state showing the areas identified by the department as “jobs-rich areas.”

(3) (A) “Sound rental housing” means any of the following:
(i) 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.
(ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.
(iii) (I) Housing occupied by tenants within the seven years preceding the date of the application, including housing that has been demolished or that tenants have vacated before the application for a development permit.

(II) For purposes of this clause, “tenant” means a person who does not own the property where they reside, including residential situations that are any of the following:

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

(ib) A single-room occupancy unit.

(ie) An accessory dwelling unit that is not subject to, or does not have a valid permit in accordance with, an ordinance adopted by a local agency pursuant to Section 65852.2.

(id) A residential motel.

(ie) A mobilehome park, as governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(ff) Any other type of residential property that is not owned by the person or a member of the person’s household, for which the person or a member of the person’s household provides payments on a regular schedule in exchange for the right to occupy the residential property.

(iv) A parcel or parcels on which an owner of residential real property has exercised their rights under Chapter 12.75
(commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application pursuant to a streamlined, ministerial approval process.

(B) “Sound rental housing” shall not mean housing that the local agency has deemed uninhabitable due to fire, flood, earthquake, or other natural disaster.

(4) “Transit-rich area” means a parcel within one-half mile of a major transit stop, as defined in Section 21064.3 of the Public Resources Code, or a parcel on a high-quality bus corridor.

(5) “Urban infill site” means a site that satisfies all of the following:

(A) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

(6) (A) “Use by right” means that the local government’s review of the housing development may 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)).

(B) A local ordinance may provide that “use by right” does not exempt the housing development 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.

(7) “Very high fire hazard severity zone” means a very high fire hazard severity zone as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

(d) The Legislature finds and declares that ensuring the adequate production of affordable housing is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy 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.
Item B-8
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

SB 995 (Atkins) - Environmental Quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2011: Housing Projects (SB 995) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 995 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 995, the Liaisons may recommend the following actions:

1) Support SB 995;
2) Support if amended SB 995;
3) Oppose SB 995;
4) Oppose unless amended SB 995;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 995, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 2, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange


Introduction and Background
SB 995 (Atkins) has been designated as part of the State Senate’s housing package. This measure provides California Environmental Quality Act (CEQA) relief by expanding the existing AB 900 process for Environmental Leadership Development Projects for housing projects, particularly affordable housing. SB 995 is part of the Senate package of housing bills to spur affordable housing production and aid California’s economic recovery due to the COVID-19 crisis.

This measure would also broaden the application and utilization of the current Master Environmental Impact Report (EIR) process that allows cities to do upfront planning that streamlines housing approvals on an individual project level. That process is currently reserved for development projects with a value of $100 million or more that meet other specified characteristics and various sports venues that have received special authorizing legislation over the last several years. Specifically, SB 900 (Atkins) would:

- Extend the Governor’s authority to certify a leadership project to January 1, 2024, and repeals AB 900 on January 1, 2025.
- Make infill housing projects that meet certain requirements, which would include a minimum investment in California, affordable housing requirements, and labor requirements, eligible for certification.
- Require a lead agency to prepare a master EIR for a general plan, plan amendment, plan element, or specific plan for housing projects where the state has provided funding for the preparation of the master EIR.

In 2011, the Legislature enacted the Jobs and Economic Improvement Through Environmental Leadership Act (AB 900-Buchanan), which established administrative and judicial review procedures for the review of the environmental review documents and public agency approvals granted for designated residential, retail, commercial, sports, cultural, entertainment, or recreational use projects, known as Environmental Leadership Development Projects (ELDP).

To qualify as an ELDP, the project must meet specified objective environmental standards. The Legislature has also applied similar expedited frameworks for specific sports stadiums that meet certain objective environmental standards.
SB 995 provides CEQA relief by making the existing AB 900-ELDP process available to housing projects, particularly affordable housing. This creates a new tool for housing developers who may have been interested in using the AB 900 process, but did not meet the existing dollar threshold.

In addition to creating housing units, it also could carry the benefit of creating numerous highly skilled and high wage construction jobs. According to figures compiled by the Governor’s Office of Planning and Research and Senate Office of Research, since 2011, 10,573 housing units have been constructed or proposed under projects certified under AB 900, and the law helped create 46,949 high-wage, permanent construction jobs.

Opponents have raised concerns that recent amendments that limit eligible projects to only those that use skilled and trained workforce will actually drive up construction costs. Opponents also argue that this bill would result in potential cost pressure of an unknown amount to the state-funded court system to process and hear challenges to a project's environmental review within the timeframes prescribed by the bill. The acceleration of some cases due to this bill could result in the need for extra personnel and resources in order for the courts to hear them within the required period.

Note: The League of California Cities has a ‘Watch’ position on this bill.

**Status of Legislation**
This bill is pending in the Assembly Natural Resources Committee.

**Support**
1HWY1
Associated Builders and Contractors Northern California Chapter
Bay Area Council
California Apartment Association
California Association of Realtors
Central City Association of Los Angeles
City of San Diego
Civil Justice Association of California
Council President Georgette Gómez, City of San Diego
Downtown San Diego Partnership
Facebook
Habitat for Humanity California

Los Angeles Business Council
Riley Realty, LP
San Diego Regional Economic Development Corporation
San Francisco Bay Area Planning and Urban Research Association
San Francisco Housing Action Coalition
Schneider Electric
Supervisor Greg Cox, Chairman, San Diego County Board of Supervisors
Supervisor Nathan Fletcher, 4th District, San Diego County Board of Supervisors
YIMBY Law

**Opposition**
City of Torrance
Livable California
Southern California Chapter of Associated Builders and Contractors
Sustainable Tamalmonte
Western Electrical Contractors Association
Attachment 2
An act to amend Sections 21180, 21181, 21183, 21185, 21189.1, and 21189.3 of, and to add Sections 21157.8 and 21183.5 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL’S DIGEST


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 (EIR) 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 authorizes the preparation of a master EIR and authorizes the use of the master EIR to limit the environmental review of subsequent projects that are described in the master EIR, as specified.

This bill would require a lead agency to prepare a master EIR for a general plan, plan amendment, plan element, or specified plan for housing projects where the state has provided funding for the preparation of the master EIR.

The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (leadership act) authorizes the Governor, until January 1, 2020, to certify projects that meet certain requirements, including certain labor-related requirements, for streamlining benefits provided by the leadership act related to compliance with CEQA and streamlining of judicial review of action taken by a public agency to require a judicial action to be resolved within 270 days of the filing of the certified record of proceedings with the court. The leadership act provides that if a lead agency fails to approve a project certified by the Governor before January 1, 2021, the certification expires and is no longer valid. The leadership act requires a lead agency to prepare the record of proceedings for the certified project concurrent with the preparation of the environmental documents. The leadership act is repealed by its own terms on January 1, 2021.

This bill would additionally include housing projects meeting certain conditions as projects eligible for certification. The bill would extend the authority of the Governor to certify a project to January 1, 2024. The bill would revise and recast the labor-related requirements for projects undertaken by public agencies and for projects undertaken by private entities. The bill would instead specify that the time period for the final resolution of any judicial action is 270 business days after the filing of the record of proceedings with the court. The bill would provide that the certification expires and is no longer valid if the lead agency fails to approve a certified project before January 1, 2025. The bill would instead repeal the leadership act on January 1, 2025. Because the bill would extend the obligation of the lead agency to prepare concurrently the record of proceedings, 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.

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

SECTION 1. Section 21157.8 is added to the Public Resources Code, to read:

21157.8. (a) To streamline and expedite environmental review for housing projects, a lead agency shall prepare a master environmental impact report for a general plan, plan amendment, plan element, or specific plan for housing projects where the state has provided funding for the preparation of the master environmental impact report.

(b) The preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, shall allow for the limited review of subsequent housing projects that are described in the master environmental impact report as being within the scope of the master environmental impact report, if the use of the master environmental impact report for subsequent housing projects are consistent with Sections 21157.1 and 21157.6.

(c) A negative declaration or mitigated negative declaration shall be prepared for a subsequent housing project if both of the following occur:

(1) An initial study has identified potentially new or additional significant effects on the environment that were not analyzed in the master environmental impact report.

(2) Feasible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public review, to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur.

(d) If there is substantial evidence in light of the whole record before the lead agency that the proposed subsequent housing project may have a significant effect on the environment and a mitigated negative declaration is not prepared, the lead agency shall prepare a focused environmental impact report pursuant to Section 21158.
SEC. 2. Section 21180 of the Public Resources Code is amended to read:

21180. For the purposes of this chapter, the following terms shall have the following meanings:

(a) “Applicant” means a public or private entity or its affiliates, or a person or entity that undertakes a public works project, that proposes a project and its successors, heirs, and assignees.

(b) “Environmental leadership development project,” “leadership project,” or “project” means a project as described in Section 21065 that is one of the following:

(1) A residential, retail, commercial, sports, cultural, entertainment, or recreational use project that is certified as LEED gold or better by the United States Green Building Council and, where applicable, that achieves a 15-percent greater standard for transportation efficiency than for comparable projects. These projects must be located on an infill site. For a project that is within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the infill project shall be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(2) A clean renewable energy project that generates electricity exclusively through wind or solar, but not including waste incineration or conversion.

(3) A clean energy manufacturing project that manufactures products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.

(4) A housing project that meets all of the following conditions:

(A) The project is located on an infill site.

(B) For a project that is located within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect, the project is consistent
with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(C) Notwithstanding subdivision (a) of Section 21183, a project eligible pursuant to this paragraph will result in a minimum investment of fifteen million dollars ($15,000,000) in California upon completion of construction.

(D) At least 15 percent of the housing project is for affordable housing dedicated as housing that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Upon completion of a project that is qualified pursuant to this paragraph and is certified by the Governor, the lead agency or applicant of the project shall notify the Office of Planning and Research of the number of housing units and affordable housing units established by the project.

(c) “Transportation efficiency” means the number of vehicle trips by employees, visitors, or customers of the residential, retail, commercial, sports, cultural, entertainment, or recreational use project divided by the total number of employees, visitors, and customers.

SEC. 3. Section 21181 of the Public Resources Code is amended to read:

21181. This chapter does not apply to a project if the Governor does not certify the project as an environmental leadership development project eligible for streamlining pursuant to this chapter before January 1, 2024.

SEC. 4. Section 21183 of the Public Resources Code is amended to read:

21183. The Governor may certify a leadership project for streamlining pursuant to this chapter if all the following conditions are met:
(a) (1) Except as provided in paragraph (2), the project will result in a minimum investment of one hundred million dollars ($100,000,000) in California upon completion of construction.

(2) Paragraph (1) does not apply to a leadership project described in paragraph (4) of subdivision (b) of Section 21180.

(b) (1) The project creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment. "Jobs that pay prevailing wages" means that all construction workers employed in the execution of the project will receive at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. If the project is certified for streamlined the project applicant shall include this requirement in all contracts for the performance of the work. A project is deemed to create jobs that pay prevailing wages, create highly skilled jobs, and promote apprenticeship training if the project applicant demonstrates to the satisfaction of the Governor that the project will comply with Section 21183.5.

(2) (A) If the project is certified pursuant to this chapter, contractors and subcontractors shall pay to all construction workers employed in the execution of the project at least the general prevailing rate of per diem wages.

(B) Except as provided in subparagraph (C), the obligation of the contractors and subcontractors to pay prevailing wages pursuant to subparagraph (A) may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the project, or by an underpaid worker through an administrative complaint or civil action. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(C) Subparagraph (B) does not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages.
wages to all construction workers employed in the execution of
the project and provides for enforcement of that obligation through
an arbitration procedure. For purposes of this subparagraph,
“project labor agreement” has the same meaning as set forth in
paragraph (1) of subdivision (b) of Section 2500 of the Public
Contract Code:
(c) The project does not result in any net additional emission
of greenhouse gases, including greenhouse gas emissions from
employee transportation, as determined by the State Air Resources
Board pursuant to Division 25.5 (commencing with Section 38500)
(d) The project applicant demonstrates compliance with the
requirements of Chapters 12.8 (commencing with Section 42649)
and 12.9 (commencing with Section 42649.8) of Part 3 of Division
30, as applicable.
(e) The project applicant has entered into a binding and
enforceable agreement that all mitigation measures required
pursuant to this division to certify the project under this chapter
shall be conditions of approval of the project, and those conditions
will be fully enforceable by the lead agency or another agency
designated by the lead agency. In the case of environmental
mitigation measures, the applicant agrees, as an ongoing obligation,
that those measures will be monitored and enforced by the lead
agency for the life of the obligation.
(f) The project applicant agrees to pay the costs of the Court of
Appeal in hearing and deciding any case, including payment of
the costs for the appointment of a special master if deemed
appropriate by the court, in a form and manner specified by the
Judicial Council, as provided in the Rules of Court adopted by the
Judicial Council pursuant to Section 21185.
(g) The project applicant agrees to pay the costs of preparing
the record of proceedings for the project concurrent with review
and consideration of the project pursuant to this division, in a form
and manner specified by the lead agency for the project.
SEC. 5. Section 21183.5 is added to the Public Resources Code,
to read:
21183.5. (a) For purposes of this section, the following
definitions apply:
(1) "Project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(2) "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.

(b) (1) For a project undertaken by a public agency that is certified pursuant to this chapter, except as provided in paragraph (2), an entity shall not be prequalified or shortlisted or awarded a contract by the public agency to perform any portion of the project unless the entity provides an enforceable commitment to the public agency that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

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

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

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

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

(c) For a project undertaken by a private entity that is certified pursuant to this chapter, the project applicant shall do both of the following:

(1) Certify to the lead agency that either of the following is true:

(A) The entirety of the project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(B) If the project is not in its entirety a public work, all construction workers employed in the execution of the project will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the
Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, 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. If the project is subject to this subparagraph, then, for those portions of the project that are not a public work, all of the following shall apply:

(i) The project applicant shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(ii) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, 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.

(iii) (I) Except as provided in subclause (III), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided by that section.

(II) Except as provided in subclause (III), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the project, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(III) Subclauses (I) and (II) do not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of
the project and provides for enforcement of that obligation through
an arbitration procedure.

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

(2) Certify to the lead agency that a skilled and trained
workforce will be used to perform all construction work on the
project. All of the following requirements shall apply to the project:

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

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

(C) (i) Except as provided in clause (ii), the applicant shall
provide to the lead agency, on a monthly basis while the project
or contract is being performed, a report demonstrating compliance
with Chapter 2.9 (commencing with Section 2600) of Part 1 of
Division 2 of the Public Contract Code. A monthly report provided
to the lead agency pursuant to this clause shall be a public record
under the California Public Records Act (Chapter 3.5 (commencing
with Section 6250) of Division 7 of Title 1 of the Government Code)
and shall be open to public inspection. An applicant that fails to
provide a monthly report demonstrating compliance with Chapter
2.9 (commencing with Section 2600) of Part 1 of Division 2 of the
Public Contract Code shall be subject to a civil penalty of ten
thousand dollars ($10,000) per month for each month for which
the report has not been provided. Any contractor or subcontractor
that fails to use a skilled and trained workforce shall be subject
to a civil penalty of two hundred dollars ($200) per day for each
worker employed in contravention of the skilled and trained
workforce requirement. Penalties may be assessed by the Labor
Commissioner within 18 months of completion of the project using
the same procedures for issuance of civil wage and penalty
assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(ii) Clause (i) does not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure.

SEC. 6. Section 21185 of the Public Resources Code is amended to read:

21185. On or before July 1, 2014, the Judicial Council shall adopt a rule of court to establish procedures applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification of the environmental impact report for an environmental leadership development project certified by the Governor pursuant to this chapter or the granting of any project approvals that require the actions or proceedings, including any potential appeals therefrom, to the court of appeal or the Supreme Court, be resolved, to the extent feasible, within 270 business days of the filing of the certified record of proceedings with the court.

SEC. 5.

SEC. 7. Section 21189.1 of the Public Resources Code is amended to read:

21189.1. If, before January 1, 2025, a lead agency fails to approve a project certified by the Governor pursuant to this chapter, then the certification expires and is no longer valid.

SEC. 6.

SEC. 8. Section 21189.3 of the Public Resources Code is amended to read:

21189.3. This chapter shall remain in effect until January 1, 2025, and as of that date is repealed unless a later enacted statute extends or repeals that date.

SEC. 7.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy 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.
Item B-9
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

SB 1079 (Skinner) - Residential Property: Foreclosure (SB 1079) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwh Schmelzer & Lange, provided a summary memo for SB 1079 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 1079, the Liaisons may recommend the following actions:

1) Support SB 1079;
2) Support if amended SB 1079;
3) Oppose SB 1079;
4) Oppose unless amended SB 1079;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 1079, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
June 29, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 1079 (Skinner) Residential property: foreclosure

Introduction and Background
Senator Skinner introduced SB 1079 in February 2020. This measure would propose a series of measures intended to mitigate against blight, vacancy, and the transfer of residential property ownership from owner-occupants to landlord investors in the event that California experiences a wave of foreclosures. The primary goal of this measure is to keep people in their homes and to prevent a waste of homes bought in a foreclosure. This measure is designed to try to prevent a similar event to the wave of foreclosures that struck California in 2007 through 2010, in the event a new wave of foreclosures strikes California.

Specifically, this bill would:
- Create a window of opportunity, modeled after the federal “First Look” program, for public entities and prospective owner-occupants to purchase foreclosed homes ahead of investors.
- Requires a trustee managing the sale of a foreclosed upon property to accept offers from individuals who will be owner-occupants of the home, and from a public entity that is utilizing public funds to purchase the property, for 20 days prior to the trustee sale.
- Raises to $10,000 per day the maximum daily fine that a government entity is authorized to impose on a legal owner of vacant residential property purchased through foreclosure for failure to maintain that property.

Note: The League of California Cities currently has a Watch position on this bill.

Status of Legislation
The bill is pending referral in the Assembly.

Support and Opposition
The Western Center on Law & Poverty and the California Rural Legal Assistance Foundation writes in support of SB 1079 as the bill is a simple, straightforward measure to limit the practices which could lead to corporate control over our neighborhoods given the scale of homeowners potentially facing foreclosure.

In opposition, National Rental Home Council argues foreclosure sales are intended to satisfy unpaid financial obligations, sometimes including unpaid property taxes to local governments. The foreclosure marketplace is also often comprised of properties that need repairs. Limiting the universe of buyers who have the intent and wherewithal to bring the past due financial obligations
current and invest in any necessary repairs to renovations could have the unintended consequences of slowing the renewed availability of foreclosed properties for residential housing.

**Support**
- California Rural Legal Assistance Foundation
- East Bay Housing Organizations
- Oakland City Council
- TechEquity Collaborative
- Western Center on Law & Poverty

**Opposition**
- CA Apartment Association
- CA Bankers Association
- CA Community Banking Network
- CA Land Title Association
- CA Mortgage Association
- CA Mortgage Bankers Association
- CA Rental Housing Association
- Fieldstead & Company
- National Rental Home Council
- Southern California Rental Housing Association
- United Trustees Association
Attachment 2

Existing law prescribes various requirements to be satisfied before the exercise of a power of sale under a mortgage or deed of trust and prescribes a procedure for the exercise of that power. Existing law, with respect to deeds of trust or mortgages containing a power of sale secured by real property with a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the Unruh Act, requires certain procedures to be followed if a default has not been cured within 30 days after recordation of the notice of default. Existing law requires, among other things, that a statement of the default containing specific information be mailed to the trustor or mortgagor at that person’s last known address. Existing law requires that all sales of real property pursuant to a power of sale contained in a deed of trust or mortgage in these circumstances be held in the county where the residence is located and to be made to the person making the highest offer, and authorizes
a trustee to receive offers during the 10-day period immediately prior to the date of sale, as prescribed.

This bill would also require a trustee, during the 20-day period before the date of sale, to receive offers from individuals who would be owner-occupants of the home and from a public entity that is utilizing public funds to purchase the property and would require any offer from a prospective owner-occupant to be accompanied by an owner-occupant certification. The bill would define the terms “owner-occupants” and “public entity” for purposes of these provisions.

Existing law, with regard to the exercise of a power of sale under a mortgage or deed of trust, requires the sale to be held in the county where the property or some part of it is situated and to be made at auction, to the highest bidder, as specified. Existing law generally requires that if the property consists of several lots or parcels, they are to be sold separately unless the deed of trust or mortgage provides otherwise.

This bill, for purposes of the exercise of a power of sale as described above, would prohibit a person from buying more than 3 properties in the same county on the same date pursuant to these procedures. The bill would define a person, for these purposes, as the entity in whose name title to the property is recorded. The bill would prohibit a trustee from bundling properties for the purpose of sale, instead requiring each property to be bid on separately, unless the deed of trust or mortgage provides otherwise.

Existing law specifically requires the owner of vacant residential property purchased at a foreclosure sale, or acquired through foreclosure under a mortgage or deed of trust, to maintain that property. Existing law authorizes a governmental entity to impose a civil fine of up to $1,000 for each day that the owner fails to maintain the property, subject to the owner being given an opportunity to cure the violation, as specified.

This bill would increase the above-described civil fine to up to $10,000.

Existing law specifies the procedure for the foreclosure of a mortgage or deed of trust secured by real property or an estate for years by judicial action. Under existing law, in an action for the recovery of any debt or enforcement of any right secured by a mortgage, the court may direct the sale of the encumbered real property or estate for years and order the proceeds applied to the payment of court costs, the expenses of levy and sale, and the amount due to the plaintiff, as provided.
This bill, if the court directs the sale of encumbered property pursuant to these provisions to recover a debt or enforce a right secured by mortgage upon a residential real property, as defined, would require the mortgagee to offer that property, first to individuals who will be owner-occupants of the home, or to a public entity that is utilizing public funds to purchase the property, for the first 20 days the property is listed. The bill would authorize any person to submit an offer to purchase the property after the first 20 days following the listing and would require that these offers be considered along with the offers submitted during the first 20-day listing period. The bill would require an owner-occupant purchaser to sign a specified certification. The bill would prescribe definitions of “owner-occupants” and “public entity” for these purposes.

This bill would require the Department of Housing and Community Development to establish a process whereby a city, county, or various housing entities may register with the department to receive notifications of foreclosure sales, as specified.


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

SECTION 1. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, “property” means real property or a leasehold estate therein, and “calendar week” means Monday through Saturday, inclusive.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the county seat of the county where the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks.
(2) The first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the public notice district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or public notice district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or public notice district or county, as the case may be, in a newspaper of general circulation published in the county in this state that is contiguous to the county in which the property or some part thereof is situated and has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census.

For the purposes of this section, publication of notice in a public notice district is governed by Chapter 1.1 (commencing with Section 6080) of Division 7 of Title 1 of the Government Code.

(3) A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community.

(4) The notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 20 days prior to the date of sale.

(5) The notice of sale shall contain the name, street address in this state, which may reflect an agent of the trustee, and either a toll-free telephone number or telephone number in this state of the trustee, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In
addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor’s parcel number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor’s parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted.

(6) The term “newspaper of general circulation,” as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

(7) The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount, including any amount provided in good faith by or on behalf of the beneficiary. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(8) (A) On and after April 1, 2012, if the deed of trust or mortgage containing a power of sale is secured by real property
containing from one to four single-family residences, the notice
of sale shall contain substantially the following language, in
addition to the language required pursuant to paragraphs (1) to (7),
inclusive:

NOTICE TO POTENTIAL BIDDERS: If you are considering
bidding on this property lien, you should understand that there are
risks involved in bidding at a trustee auction. You will be bidding
on a lien, not on the property itself. Placing the highest bid at a
trustee auction does not automatically entitle you to free and clear
ownership of the property. You should also be aware that the lien
being auctioned off may be a junior lien. If you are the highest
bidder at the auction, you are or may be responsible for paying off
all liens senior to the lien being auctioned off, before you can
receive clear title to the property. You are encouraged to investigate
the existence, priority, and size of outstanding liens that may exist
on this property by contacting the county recorder’s office or a
title insurance company, either of which may charge you a fee for
this information. If you consult either of these resources, you
should be aware that the same lender may hold more than one
mortgage or deed of trust on the property.

NOTICE TO PROPERTY OWNER: The sale date shown on
this notice of sale may be postponed one or more times by the
mortgagee, beneficiary, trustee, or a court, pursuant to Section
2924g of the California Civil Code. The law requires that
information about trustee sale postponements be made available
to you and to the public, as a courtesy to those not present at the
sale. If you wish to learn whether your sale date has been
postponed, and, if applicable, the rescheduled time and date for
the sale of this property, you may call [telephone number for
information regarding the trustee’s sale] or visit this [Internet-Web
site [Internet-Web site internet website [internet website address
for information regarding the sale of this property], using the file
number assigned to this case [case file number]. Information about
postponements that are very short in duration or that occur close
in time to the scheduled sale may not immediately be reflected in
the telephone information or on the [Internet-Web site internet
website]. The best way to verify postponement information is to
attend the scheduled sale.
(B) A mortgagee, beneficiary, trustee, or authorized agent shall make a good faith effort to provide up-to-date information regarding sale dates and postponements to persons who wish this information. This information shall be made available free of charge. It may be made available via an Internet Web site, internet website, a telephone recording that is accessible 24 hours a day, seven days a week, or through any other means that allows 24 hours a day, seven days a week, no-cost access to updated information. A disruption of any of these methods of providing sale date and postponement information to allow for reasonable maintenance or due to a service outage shall not be deemed to be a violation of the good faith standard.

(C) Except as provided in subparagraph (B), nothing in the wording of the notices required by subparagraph (A) is intended to modify or create any substantive rights or obligations for any person providing, or specified in, either of the required notices. Failure to comply with subparagraph (A) or (B) shall not invalidate any sale that would otherwise be valid under Section 2924f.

(D) Information provided pursuant to subparagraph (A) does not constitute the public declaration required by subdivision (d) of Section 2924g.

(9) If the sale of the property is to be a unified sale as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9108 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code,
shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

c (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at their last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A
____________________________________________________________,

(Deed of trust or mortgage)
DATED ____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. During the 20-day period prior to the date of sale, the trustee shall receive
offers from individuals who will be owner-occupants of the home
and from a public entity that is utilizing public funds to purchase
the property. Any offer from a prospective owner-occupant shall
be accompanied by an owner-occupant certification. The trustee
may receive offers during the 10-day period immediately prior to
the date of sale and if any offer is accepted in writing by both the
trustor or mortgagor and the beneficiary or mortgagee prior to the
time set for sale, the sale shall be postponed to a date certain and
prior to which the property may be conveyed by the trustor to the
person making the offer according to its terms. The offer is
revocable until accepted. The performance of the offer, following
acceptance, according to its terms, by a conveyance of the property
to the offeror, shall operate to terminate any further proceeding
under the notice of sale and it shall be deemed revoked.

For the purposes of this paragraph, the following definitions
shall apply:

“Owner-occupants” means buyers who will occupy the property
as their principal residence within 60 days of closing and will
maintain their occupancy for at least one year.

“Public entity” means the state, the Regents of the University
of California, a county, city, district, public authority, or public
agency, and any other political subdivision or public corporation
in the state, including, but not limited to, a community land trust
or a nonprofit entity providing affordable housing.

(5) In addition to the trustee fee pursuant to Section 2924c, the
trustee or mortgagor pursuant to a deed of trust or mortgage subject
to this subdivision shall be entitled to charge an additional fee of
fifty dollars ($50).

(6) This subdivision applies only to property on which notices
of default were filed on or after the effective date of this
subdivision.

(d) With respect to residential real property containing no more
than four dwelling units, a separate document containing a
summary of the notice of sale information in English and the
languages described in Section 1632 shall be attached to the notice
of sale provided to the mortgagor or trustor pursuant to Section
2923.3.

SEC. 2. Section 2924g of the Civil Code is amended to read:

2924g. (a) (1) All sales of property under the power of sale
contained in any deed of trust or mortgage shall be held in the
county where the property or some part thereof is situated, and
shall be made at auction, to the highest bidder, between the hours
of 9 a.m. and 5 p.m. on any business day, Monday through Friday.
(2) The sale shall commence at the time and location specified
in the notice of sale. Any postponement shall be announced at the
time and location specified in the notice of sale for commencement
of the sale or pursuant to paragraph (1) of subdivision (c).
(3) If the sale of more than one parcel of real property has been
scheduled for the same time and location by the same trustee, (A)
any postponement of any of the sales shall be announced at the
time published in the notice of sale, (B) the first sale shall
commence at the time published in the notice of sale or
immediately after the announcement of any postponement, and
(C) each subsequent sale shall take place as soon as possible after
the preceding sale has been completed.
(4) Notwithstanding any other law, a sale of property under the
power of sale contained in any deed of trust or mortgage shall be
subject to the follow restrictions:
(A) No person shall be permitted to purchase more than three
properties in the same county on the same date pursuant to
procedures described in this section. For purposes of this paragraph,
“person” is defined as the entity in whose name title to the property
is recorded.
(B) A trustee shall not bundle properties for the purpose of sale.
Each property shall be bid on separately, unless the deed of trust
or mortgage provides otherwise.
(b) When the property consists of several known lots or parcels,
they shall be sold separately unless the deed of trust or mortgage
provides otherwise. When a portion of the property is claimed by
a third person, who requires it to be sold separately, the portion
subject to the claim may be thus sold. The trustor, if present at the
sale, may also, unless the deed of trust or mortgage otherwise
provides, direct the order in which property shall be sold, when
the property consists of several known lots or parcels which may
be sold to advantage separately, and the trustee shall follow that
direction. After sufficient property has been sold to satisfy the
indebtedness, no more can be sold.
If the property under power of sale is in two or more counties,
sale may take place in any one of the counties where the property
or a portion thereof is located.

(c) (1) There may be a postponement or postponements of the
sale proceedings, including a postponement upon instruction by
the beneficiary to the trustee that the sale proceedings be
postponed, at any time prior to the completion of the sale for any
period of time not to exceed a total of 365 days from the date set
forth in the notice of sale. The trustee shall postpone the sale in
accordance with any of the following:

(A) Upon the order of any court of competent jurisdiction.
(B) If stayed by operation of law.
(C) By mutual agreement, whether oral or in writing, of any
trustor and any beneficiary or any mortgagor and any mortgagee.
(D) At the discretion of the trustee.

(2) In the event that the sale proceedings are postponed for a
period or periods totaling more than 365 days, the scheduling of
any further sale proceedings shall be preceded by giving a new
notice of sale in the manner prescribed in Section 2924f. New fees
incurred for the new notice of sale shall not exceed the amounts
specified in Sections 2924c and 2924d, and shall not exceed
reasonable costs that are necessary to comply with this paragraph.

(d) The notice of each postponement and the reason therefor
shall be given by public declaration by the trustee at the time and
place last appointed for sale. A public declaration of postponement
shall also set forth the new date, time, and place of sale and the
place of sale shall be the same place as originally fixed by the
trustee for the sale. No other notice of postponement need be given.
However, the sale shall be conducted no sooner than on the seventh
day after the earlier of (1) dismissal of the action or (2) expiration
or termination of the injunction, restraining order, or stay that
required postponement of the sale, whether by entry of an order
by a court of competent jurisdiction, operation of law, or otherwise,
unless the injunction, restraining order, or subsequent order
expressly directs the conduct of the sale within that seven-day
period. For purposes of this subdivision, the seven-day period shall
not include the day on which the action is dismissed, or the day
on which the injunction, restraining order, or stay expires or is
terminated. If the sale had been scheduled to occur, but this
subdivision precludes its conduct during that seven-day period, a
new notice of postponement shall be given if the sale had been
scheduled to occur during that seven-day period. The trustee shall
maintain records of each postponement and the reason therefor.
(e) Notwithstanding the time periods established under
subdivision (d), if postponement of a sale is based on a stay
imposed by Title 11 of the United States Code (bankruptcy), the
sale shall be conducted no sooner than the expiration of the stay
imposed by that title and the seven-day provision of subdivision
(d) shall not apply.
SEC. 3. Section 2929.3 of the Civil Code is amended to read:
2929.3. (a) (1) A legal owner shall maintain vacant residential
property purchased by that owner at a foreclosure sale, or acquired
by that owner through foreclosure under a mortgage or deed of
trust. A governmental entity may impose a civil fine of up to ten
thousand dollars ($10,000) per day for a violation. If the
governmental entity chooses to impose a fine pursuant to this
section, it shall give notice of the alleged violation, including a
description of the conditions that gave rise to the allegation, and
notice of the entity’s intent to assess a civil fine if action to correct
the violation is not commenced within a period of not less than 14
days and completed within a period of not less than 30 days. The
notice shall be mailed to the address provided in the deed or other
instrument as specified in subdivision (a) of Section 27321.5 of
the Government Code, or, if none, to the return address provided
on the deed or other instrument.
(2) The governmental entity shall provide a period of not less
than 30 days for the legal owner to remedy the violation prior to
imposing a civil fine and shall allow for a hearing and opportunity
to contest any fine imposed. In determining the amount of the fine,
the governmental entity shall take into consideration any timely
and good faith efforts by the legal owner to remedy the violation.
The maximum civil fine authorized by this section is ten thousand
dollars ($10,000) for each day that the owner fails to maintain the
property, commencing on the day following the expiration of the
period to remedy the violation established by the governmental
entity.
(3) Subject to the provisions of this section, a governmental
entity may establish different compliance periods for different
conditions on the same property in the notice of alleged violation
mailed to the legal owner.
(b) For purposes of this section, “failure to maintain” means failure to care for the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers or squatters from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water or other conditions that create a public nuisance.

c) Notwithstanding subdivisions (a) and (b), a governmental entity may provide less than 30 days’ notice to remedy a condition before imposing a civil fine if the entity determines that a specific condition of the property threatens public health or safety and provided that notice of that determination and time for compliance is given.

(d) Fines and penalties collected pursuant to this section shall be directed to local nuisance abatement programs, including, but not limited to, legal abatement proceedings.

e) A governmental entity may not impose fines on a legal owner under both this section and a local ordinance.

(f) These provisions shall not preempt any local ordinance.

g) This section shall only apply to residential real property.

(h) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

SEC. 4. Section 726.7 is added to the Code of Civil Procedure, to read:

726.7. (a) If in any action to recover a debt or enforce a right secured by mortgage upon a residential real property pursuant to this chapter the court directs the sale of the encumbered property pursuant to Section 726, the mortgagee shall, before offering the residential real property for sale on the open market in accordance with this chapter, first offer that property exclusively to individuals who will be owner-occupants of the home, or to a public entity that is utilizing public funds to purchase the property, for the first 20 days the property is listed on the market. After the first 20 days that the property is listed, any person may submit an offer to purchase the property and these offers shall be considered along with the offers submitted during the first 20-day listing period. An owner-occupant purchaser shall be required to sign an owner-occupant certification as a rider to the residential real estate purchase and sale contract.
(b) For the purpose of this section:

(1) "Owner-occupants" means buyers who will occupy the property as their principal residence within 60 days of closing and will maintain their occupancy for at least one year.

(2) "Public entity" means the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, including, but not limited to, a community land trust or a nonprofit entity providing affordable housing.

SEC. 5. Section 50415 is added to the Health and Safety Code, to read:

50415. (a) Notwithstanding any law, the department shall establish a process whereby a city, county, community land trust, or housing sponsor may register with the department in order to receive notification of a foreclosure sale of residential real property that is subject to Section 726.7 of the Code of Civil Procedure or notification pursuant to Section 1954.63 of the Civil Code.

(b) Upon receipt of a notice received pursuant to paragraph (2) of subdivision (c) of Section 726.7 of the Code of Civil Procedure or paragraph (1) of subdivision (b) of Section 1954.63 of the Civil Code, the department shall notify each entity that has registered with it pursuant to this section of that notice.

(c) Upon request, the department shall provide a list of each entity that has registered with it pursuant to this section.

(d) For purposes of this section:

(1) "Community land trust" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that satisfies all of the following:

(A) Has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences.

(B) All dwellings and units located on the land owned by the nonprofit corporation are sold to a qualified owner to be occupied as the qualified owner’s primary residence or rented to persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.

(C) The land owned by the nonprofit corporation, on which a dwelling or unit sold to a qualified owner is situated, is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years.
(2) “Mortgagee” means any entity that has issued a loan that is
secured by a mortgage on residential real property.
(3) “Residential real property” means any real property located
in this state that contains at least one residential dwelling unit.
Item B-10
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

SB 1085 (Skinner) - Density Bonus Law: Qualifications for Incentives or Concessions: Student Housing for Lower Income Students: Moderate-Income Persons and Families: Local Government Constraints (SB 1085) involves a policy matter that may not specifically addressed within the adopted Legislative Platform language. Some of the items in the legislative platform which may apply to SB 1085 include, but are not limited to:

- Support legislation that preserves local control.
- Support legislation that protects local control over urban planning.
- Oppose state legislation that supersedes a jurisdiction’s adopted zoning ordinances.
- Oppose preemption of the City of Beverly Hills’ local authority whether by state or federal legislation or ballot propositions.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 1085 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 1085, the Liaisons may recommend the following actions:
1) Support SB 1085;
2) Support if amended SB 1085;
3) Oppose SB 1085;
4) Oppose unless amended SB 1085;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 1085, then staff will place the item on a future City Council Agenda for concurrence should an adopted City Council priority within the City’s Legislative Platform not apply to this bill. Should there be a correlation between the bill and the City’s Legislative Platform, then staff will draft a letter for the Mayor to sign.
Attachment 1
June 29, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
       Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
       Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 1085 Density Bonus Law: qualifications for incentives or concessions

Introduction and Background
Senator Skinner introduced SB 1085 in February 2020. This measure would enhance existing Density Bonus Law by increasing the number of incentives provided to developers in exchange for providing more affordable units. This measure would modify Density Bonus Law to further incentivize the construction of very low-, low-, and moderate-income housing units.

This measure would also ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of affordable housing. Finally, this measure would ensure that Density Bonus Law incentivizes the construction of more housing across all areas of the state.

Specifically, this bill would:

• Makes findings and declarations that it is intent of the Legislature to make modifications to the Density Bonus Law to further incentivize the construction of very low, low-, and moderate-income housing units.

• States that it is further the intent of the Legislature in making these modifications to the Density Bonus Law to ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of adequate levels of affordable housing.

• States that the Legislature further intends that these modifications will ensure that the Density Bonus Law creates incentives for the construction of more housing across all areas of the state.

• Provide that a development containing 20 percent moderate-income rental units to receive the following:
  - 35 percent density bonus.
  - For projects located ½ mile from a transit stop, a local government shall not impose a parking ratio inclusive of handicapped and guest parking that exceeds 0.5 spaces per bedroom.
• Provides that the inclusion of the specified percentage of moderate-income rental units shall entitle a developer to the following amounts of concessions and incentives:
  o One incentive or concession for projects that include at least 20 percent of the total rental units for moderate-income households.
  o Two concessions or incentives for projects that include at least 30 percent of the total rental units for moderate-income households.
  o Three concessions or incentives for projects that include at least 40 percent of the total rental units for moderate-income households.

• Provides that in order for a development with moderate-income rental units to be eligible for the moderate-income benefits, the rent for the moderate-income unit must be 30 percent below the market rate for the locality and the applicant must provide the locality with evidence to establish that the units meet those requirements.

• Prohibits fees relating to affordable housing, including inclusionary zoning fees, in lieu fees, and public benefit fees established under a local agency’s police powers from being imposed on a housing development that includes affordable units or bonus units.

• Defines “total units” or “total dwelling units” as the calculation of the number of units that:
  o Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.
  o Includes a unit designated to satisfy an inclusionary zoning requirement of a local agency.

Increasing the amount of affordable housing for low-income families remains a top priority for the Senate. Unfortunately, the current budget environment does not provide for additional public subsidy. Enhancing the Density Bonus Law would allow developers to expand projects, thereby enhancing their profitability, and adding more affordable housing units at no cost to taxpayers.

Note: The League of California Cities currently has a ‘Watch’ position on this measure.

**Status of Legislation**
The bill is pending referral in the Assembly.

**Support and Opposition**
The author of the bill argues that the Density Bonus Law is a critical tool to incentivize the development of affordable housing in the state. The author points to flaws in the program that result in many cities underutilizing or not utilizing this valuable tool to build affordable housing.

The California Rural Legal Assistance Foundation (CRLAF) and Western Center on Law and Poverty (WCLP) are opposed to the bill because they argue that it would incentivize the construction of moderate-income units at the expense of low- and very low-income households. Claiming that this will further exacerbate the affordability crisis for lower-income households.

**Support**
All Home
Bay Area Council
Bridge Housing Corporation
California Association of Realtors
California Building Industry Association
California Community Builders
California YIMBY
Central City Association Chan
Zuckerberg Initiative Facebook, INC.
Habitat for Humanity California Los Angeles Business Council
San Francisco Bay Area Planning and Urban Research Association San Francisco Foundation
San Francisco Housing Action Coalition
Schneider Electric Silicon Valley At Home
Silicon Valley Community Foundation
Terner Center for Housing Innovation At the University of California, Berkeley TMG Partners
1 Individual

**Opposition**
A Better Way Forward to House California
California Rural Legal Assistance Foundation
New Livable California Db a Livable California
Sustainable Tamalmonte
Western Center on Law and Poverty
11 Individuals
Attachment 2
An act to amend Sections 65400 and 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST


(1) Existing law, known as the Density Bonus Law, requires a city or county to provide a developer that proposes a housing development in the city or county 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 agrees to, among other things, construct a specified percentage of units for very low income, low-income, or moderate-income households or qualifying residents, including lower income students. Existing law defines “incentives or concessions” to include, among other things, regulatory incentives or concessions proposed by the developer or the
city or county that result in identifiable and actual cost reductions to provide for affordable housing costs, as specified.

This bill would revise that definition of “incentives or concessions” to include those proposed regulatory incentives or concessions that the developer determines result in identifiable and actual cost reductions to provide for affordable housing costs.

(2) Existing

Existing law requires the amount of a density bonus and the number of incentives or concessions a qualifying developer receives to be pursuant to a certain formula based on the total number of units in the housing development, excluding the units added by a density bonus awarded pursuant to the Density Bonus Law or any local law granting a greater density bonus.

This bill would require a unit designated to satisfy the inclusionary zoning requirements of a city or county to be included in the total number of units on which a density bonus and the number of incentives or concessions are based.

This bill would require a city or county to grant a density bonus and certain incentives or concessions if the developer agrees to construct a housing development that will contain a specified percentage of units for households of low or moderate incomes and for which the rent is 30% below the market rate for that city or county. The bill would require a city or county to grant one incentive or concession for a project that will contain a specified percentage of units for lower income students in a student housing development. The bill would make various changes to the above-referenced formula, including, among others, increasing the percentage density bonus to 40% for housing developments that have 11% of its units for very low income households.

(3)

(2) Existing law requires the planning agency of the city or county to provide to the department, the Office of Planning and Research, and the legislative body of the city or county, by April 1 of each year, an annual report that includes, among other things, the city or county’s progress in meeting its share of the regional housing needs.

This bill would require the planning agency to include in that report the number of units in a student housing development for lower income students for which the developer was granted a density bonus.

(4)

(3) Existing law authorizes a city or county to refuse a concession or incentive if the city or county makes a written finding, based upon
substantial evidence that the concession or incentive would have a specified adverse impact on public health and safety, the physical environment, or real property listed in the California Register of Historical Resources.

This bill would remove the specified adverse impact on the physical environment from the list of reasons for which a city or county is authorized to refuse a concession or incentive.

Existing law prohibits a city or county from applying any development standard that will have the effect of physically precluding the construction of a development meeting the criteria for a density bonus at the densities or with the concessions or incentives permitted by certain provisions of the Density Bonus Law. Existing law authorizes an applicant to submit to a city or county a proposal for the waiver or reduction of such a development standard and to request a meeting with the city or county, and requires a court to award reasonable attorney’s fees and costs of suit to the plaintiff if the court finds that the refusal to grant a waiver or reduction violates certain provisions of the Density Bonus Law. Existing law prohibits these provisions from being interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specified adverse impact upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

This bill would remove the specified impact upon the physical environment from the limitations on the above-described requirement that a local government waive or reduce development standards.

This bill would prohibit fees relating to affordable housing, affordable housing impact fees, including inclusionary zoning fees, in-lieu fees, and public benefit fees, from being imposed on a housing development’s affordable units or bonus units.

This bill would make findings and declarations related to the modifications to the Density Bonus Law made by this bill.

(5) 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.

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

SECTION 1. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

1. Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

2. Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) (i) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(ii) The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of standards, forms, and definitions adopted by the Department of Housing and Community Development. The department may review, adopt, amend, and repeal the standards, forms, or definitions, to implement this article. Any standards, forms, or definitions adopted to implement this article shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. Before and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government’s compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.
(iii) The report may include the number of units that have been substantially rehabilitated, converted from nonaffordable to affordable by acquisition, and preserved consistent with the standards set forth in paragraph (2) of subdivision (c) of Section 65583.1. The report shall document how the units meet the standards set forth in that subdivision.

(iv) The planning agency shall include the number of units in a student housing development for lower income students for which the developer of the student housing development was granted a density bonus pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 65915.

(C) The number of housing development applications received in the prior year.

(D) The number of units included in all development applications in the prior year.

(E) The number of units approved and disapproved in the prior year.

(F) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(G) A listing of sites rezoned to accommodate that portion of the city’s or county’s share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory required by paragraph (1) of subdivision (c) of Section 65583 and Section 65584.09. The listing of sites shall also include any additional sites that may have been required to be identified by Section 65863.

(H) The number of net new units of housing, including both rental housing and for-sale housing and any units that the County of Napa or the City of Napa may report pursuant to an agreement entered into pursuant to Section 65584.08, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units and the number of for-sale units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of
occupancy, a unique site identifier that must include the assessor’s
parcel number, but may include street address, or other identifiers.

(I) The number of applications submitted pursuant to subdivision
(a) of Section 65913.4, the location and the total number of
developments approved pursuant to subdivision (b) of Section
65913.4, the total number of building permits issued pursuant to
subdivision (b) of Section 65913.4, the total number of units
including both rental housing and for-sale housing by area median
income category constructed using the process provided for in
subdivision (b) of Section 65913.4.

(J) If the city or county has received funding pursuant to the
Local Government Planning Support Grants Program (Chapter 3.1
(commencing with Section 50515) of Part 2 of Division 31 of the
Health and Safety Code), the information required pursuant to
subdivision (a) of Section 50515.04 of the Health and Safety Code.

(b) If a court finds, upon a motion to that effect, that a city,
county, or city and county failed to submit, within 60 days of the
deadline established in this section, the housing element portion
of the report required pursuant to subparagraph (B) of paragraph
(2) of subdivision (a) that substantially complies with the
requirements of this section, the court shall issue an order or
judgment compelling compliance with this section within 60 days.
If the city, county, or city and county fails to comply with the
court’s order within 60 days, the plaintiff or petitioner may move
for sanctions, and the court may, upon that motion, grant
appropriate sanctions. The court shall retain jurisdiction to ensure
that its order or judgment is carried out. If the court determines
that its order or judgment is not carried out within 60 days, the
court may issue further orders as provided by law to ensure that
the purposes and policies of this section are fulfilled. This
subdivision applies to proceedings initiated on or after the first
day of October following the adoption of forms and definitions by
the Department of Housing and Community Development pursuant
to paragraph (2) of subdivision (a), but no sooner than six months
following that adoption.

(c) The Department of Housing and Community Development
shall post a report submitted pursuant to this section on its internet
website within a reasonable time of receiving the report.

SEC. 2. Section 65915 of the Government Code is amended
to read:
65915. (a) (1) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall comply with this section. A city, county, or city and county shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(2) A local government shall not condition the submission, review, or approval of an application pursuant to this chapter on the preparation of an additional report or study that is not otherwise required by state law, including this section. This subdivision does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p).

(3) In order to provide for the expeditious processing of a density bonus application, the local government shall do all of the following:

(A) Adopt procedures and timelines for processing a density bonus application.

(B) Provide a list of all documents and information required to be submitted with the density bonus application in order for the density bonus application to be deemed complete. This list shall be consistent with this chapter.

(C) Notify the applicant for a density bonus whether the application is complete in a manner consistent with the timelines specified in Section 65943.

(D) (i) If the local government notifies the applicant that the application is deemed complete pursuant to subparagraph (C), provide the applicant with a determination as to the following matters:

(I) The amount of density bonus, calculated pursuant to subdivision (f), for which the applicant is eligible.

(II) If the applicant requests a parking ratio pursuant to subdivision (p), the parking ratio for which the applicant is eligible.

(III) If the applicant requests incentives or concessions pursuant to subdivision (d) or waivers or reductions of development
standards pursuant to subdivision (e), whether the applicant has
provided adequate information for the local government to make
a determination as to those incentives, concessions, or waivers or
reductions of development standards.
(ii) Any determination required by this subparagraph shall be
based on the development project at the time the application is
deemed complete. The local government shall adjust the amount
of density bonus and parking ratios awarded pursuant to this section
based on any changes to the project during the course of
development.
(b) (1) A city, county, or city and county shall grant one density
bonus, the amount of which shall be as specified in subdivision
(f), and, if requested by the applicant and consistent with the
applicable requirements of this section, incentives or concessions,
as described in subdivision (d), waivers or reductions of
development standards, as described in subdivision (e), and parking
ratios, as described in subdivision (p), if an applicant for a housing
development seeks and agrees to construct a housing development,
excluding any units permitted by the density bonus awarded
pursuant to this section, that will contain at least any one of the
following:
(A) Ten percent of the total units of a housing development for
lower income households, as defined in Section 50079.5 of the
Health and Safety Code.
(B) Five percent of the total units of a housing development for
very low income households, as defined in Section 50105 of the
Health and Safety Code.
(C) A senior citizen housing development, as defined in Sections
51.3 and 51.12 of the Civil Code, or a mobilehome park that limits
residency based on age requirements for housing for older persons
pursuant to Section 798.76 or 799.5 of the Civil Code.
(D) Ten percent of the total dwelling units in a common interest
development, as defined in Section 4100 of the Civil Code, for
persons and families of moderate income, as defined in Section
50093 of the Health and Safety Code, provided that all units in the
development are offered to the public for purchase.
(E) Ten percent of the total units of a housing development for
transitional foster youth, as defined in Section 66025.9 of the
Education Code, disabled veterans, as defined in Section 18541,
or homeless persons, as defined in the federal McKinney-Vento
Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.). The units described in this subparagraph shall be subject to a recorded affordability restriction of 55 years and shall be provided at the same affordability level as very low income units.

(F) (i) Twenty percent of the total units for lower income students in a student housing development that meets the following requirements:

(I) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges. In order to be eligible under this subclause, the developer shall, as a condition of receiving a certificate of occupancy, provide evidence to the city, county, or city and county that the developer has entered into an operating agreement or master lease with one or more institutions of higher education for the institution or institutions to occupy all units of the student housing development with students from that institution or institutions. An operating agreement or master lease entered into pursuant to this subclause is not violated or breached if, in any subsequent year, there are not sufficient students enrolled in an institution of higher education to fill all units in the student housing development.

(II) The applicable 20-percent units will be used for lower income students.

(III) The rent provided in the applicable units of the development for lower income students shall be calculated at 30 percent of 65 percent of the area median income for a single-room occupancy unit type.

(IV) The development will provide priority for the applicable affordable units for lower income students experiencing homelessness. A homeless service provider, as defined in paragraph (3) of subdivision (d) of Section 103577 of the Health and Safety Code, or institution of higher education that has knowledge of a person’s homeless status may verify a person’s status as homeless for purposes of this subclause.

(ii) For purposes of calculating a density bonus granted pursuant to this subparagraph, the term “unit” as used in this section means one rental bed and its pro rata share of associated common area.
facilities. The units described in this subparagraph shall be subject
to a recorded affordability restriction of 55 years.
(G) One hundred percent of the total units, exclusive of a
manager’s unit or units, are for lower income households, as
defined by Section 50079.5 of the Health and Safety Code, except
that up to 20 percent of the total units in the development may be
for moderate-income households, as defined in Section 50053 of
the Health and Safety Code.
(H) Twenty percent of the units meet both of the following:
i) The unit is for households of low or moderate incomes, as
defined in Sections 50079.5 and 50093 of the Health and Safety
Code, respectively.
   (ii) The rent for the unit is 30 percent below the market rate for
the city, county, or city and county in which the housing
development is located. The applicant shall provide the city,
county, or city and county with evidence to establish that the units
meet the requirement of this clause.
(2) For purposes of calculating the amount of the density bonus
pursuant to subdivision (f), an applicant who requests a density
bonus pursuant to this subdivision shall elect whether the bonus
shall be awarded on the basis of subparagraph (A), (B), (C), (D),
(E), (F), (G), or (H) of paragraph (1).
(c) (1) (A) An applicant shall agree to, and the city, county,
or city and county shall ensure, the continued affordability of all
very low, low-, and moderate-income rental units that qualified
the applicant for the award of the density bonus for 55 years or a
longer period of time if required by the construction or mortgage
financing assistance program, mortgage insurance program, or
rental subsidy program.
   (B) (i) Except as otherwise provided in clause (ii), rents for the
lower and moderate income density bonus units shall be set at an
affordable rent, as defined in Section 50053 of the Health and
Safety Code.
   (ii) For housing developments meeting the criteria of
subsection (G) of paragraph (1) of subdivision (b), rents for all
units in the development, including both base density and density
bonus units, shall be as follows:
   (I) The rent for at least 20 percent of the units in the
development shall be set at an affordable rent, as defined in Section
(II) The rent for the remaining units in the development shall be set at an amount consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of all for-sale units that qualified the applicant for the award of the density bonus are persons and families of very low, low, or moderate income, as required, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller’s proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government’s initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government’s proportionate share of appreciation shall be equal to the ratio of the local government’s initial subsidy to the fair market value of the home at the time of initial sale.

(3) (A) An applicant shall be ineligible for a density bonus or any other incentives or concessions under this section if the housing development is proposed on any property that includes a parcel or parcels on which rental dwelling units are or, if the dwelling units have been vacated or demolished in the five-year period preceding the application, have been subject to a recorded covenant,
ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income; subject to any other form of rent or price control through a public entity’s valid exercise of its police power; or occupied by lower or very low income households, unless the proposed housing development replaces those units, and either of the following applies:

(i) The proposed housing development, inclusive of the units replaced pursuant to this paragraph, contains affordable units at the percentages set forth in subdivision (b).

(ii) Each unit in the development, exclusive of a manager’s unit or units, is affordable to, and occupied by, either a lower or very low income household.

(B) For the purposes of this paragraph, “replace” shall mean either of the following:

(i) If any dwelling units described in subparagraph (A) are occupied on the date of application, the proposed housing development shall provide at least the same number of units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy. If the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database. For unoccupied dwelling units described in subparagraph (A) in a development with occupied units, the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy. If the income category of the last household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database. All
replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(ii) If all dwelling units described in subparagraph (A) have been vacated or demolished within the five-year period preceding the application, the proposed housing development shall provide at least the same number of units of equivalent size as existed at the highpoint of those units in the five-year period preceding the application to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those persons and families in occupancy at that time, if known. If the incomes of the persons and families in occupancy at the highpoint is not known, it shall be rebuttably presumed that low-income and very low income renter households occupied these units in the same proportion of low-income and very low income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database. All replacement calculations resulting in fractional units shall be rounded up to the next whole number. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed development is for-sale units, the units replaced shall be subject to paragraph (2).

(C) Notwithstanding subparagraph (B), for any dwelling unit described in subparagraph (A) that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government’s valid exercise of its police power and that is or was occupied by persons or families above lower income, the city, county, or city and county may do either of the following:

(i) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years. If the proposed
development is for-sale units, the units replaced shall be subject
to paragraph (2).
(ii) Require that the units be replaced in compliance with the
jurisdiction’s rent or price control ordinance, provided that each
unit described in subparagraph (A) is replaced. Unless otherwise
required by the jurisdiction’s rent or price control ordinance, these
units shall not be subject to a recorded affordability restriction.
(D) For purposes of this paragraph, “equivalent size” means
that the replacement units contain at least the same total number
of bedrooms as the units being replaced.
(E) Subparagraph (A) does not apply to an applicant seeking a
density bonus for a proposed housing development if the
applicant’s application was submitted to, or processed by, a city,
county, or city and county before January 1, 2015.
(d) (1) An applicant for a density bonus pursuant to subdivision
(b) may submit to a city, county, or city and county a proposal for
the specific incentives or concessions that the applicant requests
pursuant to this section, and may request a meeting with the city,
county, or city and county. The city, county, or city and county
shall grant the concession or incentive requested by the applicant
unless the city, county, or city and county makes a written finding,
based upon substantial evidence, of any of the following:
(A) The concession or incentive does not result in identifiable
and actual cost reductions, consistent with subdivision (k), to
provide for affordable housing costs, as defined in Section 50052.5
of the Health and Safety Code, or for rents for the targeted units
to be set as specified in subdivision (c).
(B) The concession or incentive would have a specific, adverse
impact, as defined in paragraph (2) of subdivision (d) of Section
65589.5, upon public health and safety or on any real property that
is listed in the California Register of Historical Resources and for
which there is no feasible method to satisfactorily mitigate or avoid
the specific, adverse impact without rendering the development
unaffordable to low-income and moderate-income households.
(C) The concession or incentive would be contrary to state or
federal law.
(2) Upon a request not refused pursuant to paragraph (1), the
applicant shall receive the following number of incentives or
concessions for the following projects:
(A) One incentive or concession for a project that meets any of the following criteria:
   (i) At least 10 percent of the total units are for lower income households.
   (ii) At least 5 percent of the total units are for very low income households.
   (iii) At least 10 percent of the total units are for persons and families of moderate income in a common interest development.
   (iv) At least 20 percent of the total units are for lower income students in a student housing development.
   (v) At least 20 percent of the total units meet the requirements of subparagraph (H) of paragraph (1) of subdivision (b).

(B) Two incentives or concessions for a project that meets any of the following criteria:
   (i) At least 20 percent of the total units are for lower income households.
   (ii) At least 10 percent of the total units are for very low income households.
   (iii) At least 20 percent of the total units are for persons and families of moderate income in a common interest development.
   (iv) At least 30 percent of the total units meet the requirements of subparagraph (H) of paragraph (1) of subdivision (b).

(C) Three incentives or concessions for a project that meets any of the following criteria:
   (i) At least 30 percent of the total units are for lower income households.
   (ii) At least 15 percent of the total units are for very low income households.
   (iii) At least 30 percent of the total units are for persons and families of moderate income in a common interest development.
   (iv) At least 40 percent of the total units meet the requirements of subparagraph (H) of paragraph (1) of subdivision (b).

(D) Four incentives or concessions for a project meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b).

If the project is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the applicant shall also receive a height increase of up to three additional stories, or 33 feet.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density
bonus, incentive, or concession. If a court finds that the refusal to
grant a requested density bonus, incentive, or concession is in
violation of this section, the court shall award the plaintiff
reasonable attorney’s fees and costs of suit. This subdivision shall
not be interpreted to require a local government to grant an
incentive or concession that has a specific, adverse impact, as
defined in paragraph (2) of subdivision (d) of Section 65589.5,
upon health or safety, and for which there is no feasible method
to satisfactorily mitigate or avoid the specific adverse impact. This
subdivision shall not be interpreted to require a local government
to grant an incentive or concession that would have an adverse
impact on any real property that is listed in the California Register
of Historical Resources. The city, county, or city and county shall
establish procedures for carrying out this section that shall include
legislative body approval of the means of compliance with this
section.

(4) The city, county, or city and county shall bear the burden
of proof for the denial of a requested concession or incentive.

(e) (1) In no case may a city, county, or city and county apply
any development standard that will have the effect of physically
precluding the construction of a development meeting the criteria
of subdivision (b) at the densities or with the concessions or
incentives permitted by this section. Subject to paragraph (3), an
applicant may submit to a city, county, or city and county a
proposal for the waiver or reduction of development standards that
will have the effect of physically precluding the construction of a
development meeting the criteria of subdivision (b) at the densities
or with the concessions or incentives permitted under this section,
and may request a meeting with the city, county, or city and county.

If a court finds that the refusal to grant a waiver or reduction of
development standards is in violation of this section, the court
shall award the plaintiff reasonable attorney’s fees and costs of
suit. This subdivision shall not be interpreted to require a local
government to waive or reduce development standards if the waiver
or reduction would have a specific, adverse impact, as defined in
paragraph (2) of subdivision (d) of Section 65589.5, upon health
or safety, and for which there is no feasible method to satisfactorily
mitigate or avoid the specific adverse impact. This subdivision
shall not be interpreted to require a local government to waive or
reduce development standards that would have an adverse impact
on any real property that is listed in the California Register of
Historical Resources, or to grant any waiver or reduction that would
be contrary to state or federal law.
(2) A proposal for the waiver or reduction of development
standards pursuant to this subdivision shall neither reduce nor
increase the number of incentives or concessions to which the
applicant is entitled pursuant to subdivision (d).
(3) A housing development that receives a waiver from any
maximum controls on density pursuant to clause (ii) of
subparagraph (D) of paragraph (3) of subdivision (f) shall not be
eligible for, and shall not receive, a waiver or reduction of
development standards pursuant to this subdivision, other than as
expressly provided in subparagraph (D) of paragraph (2) of
subdivision (d) and clause (ii) of subparagraph (D) of paragraph
(3) of subdivision (f).
(f) For the purposes of this chapter, “density bonus” means a
density increase over the otherwise maximum allowable gross
residential density as of the date of application by the applicant to
the city, county, or city and county, or, if elected by the applicant,
a lesser percentage of density increase, including, but not limited
to, no increase in density. The amount of density increase to which
the applicant is entitled shall vary according to the amount by
which the percentage of affordable housing units exceeds the
percentage established in subdivision (b).
(1) For housing developments meeting the criteria of
subparagraph (A) of paragraph (1) of subdivision (b), the density
bonus shall be calculated as follows:

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<th>Percentage Low-Income Units</th>
<th>Percentage Density Bonus</th>
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(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

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<th>Percentage Very Low Income Units</th>
<th>Percentage Density Bonus</th>
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(3) (A) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(B) For housing developments meeting the criteria of subparagraph (E) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of the type of units giving rise to a density bonus under that subparagraph.

(C) For housing developments meeting the criteria of subparagraph (F) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the student housing units.

(D) For housing developments meeting the criteria of subparagraph (G) of paragraph (1) of subdivision (b), the following shall apply:

(i) Except as otherwise provided in clause (ii), the density bonus shall be 80 percent of the number of units for lower income households.

(ii) If the housing development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, the city, county, or city and county shall not impose any maximum controls on density.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

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<th>Percentage Moderate-Income Units</th>
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For housing developments meeting the criteria of subparagraph (H) of paragraph (1) of subdivision (b), the density bonus shall be 35 percent of the total units.

(6) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(7) Fees relating to affordable housing—Affordable housing impact fees, including inclusionary zoning fees, in-lieu fees, and
public benefit fees, shall not be imposed on a housing development’s affordable units or bonus units.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

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<th>Percentage Very Low Income</th>
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(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of
development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government before the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final
subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a childcare facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the childcare facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the childcare facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The childcare facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the childcare facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or city and county shall not be required to provide a density bonus or concession for a childcare facility if it finds, based upon substantial evidence, that the community has adequate childcare facilities.

(4) “Childcare facility,” as used in this section, means a child daycare facility other than a family daycare home, including, but not limited to, infant centers, preschools, extended daycare facilities, and schoolage childcare centers.

(i) “Housing development,” as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, “housing development” also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code,
approved by a city, county, or city and county and consists of
residential units or unimproved residential lots and either a project
to substantially rehabilitate and convert an existing commercial
building to residential use or the substantial rehabilitation of an
existing multifamily dwelling, as defined in subdivision (d) of
Section 65863.4, where the result of the rehabilitation would be a
net increase in available residential units. For the purpose of
calculating a density bonus, the residential units shall be on
contiguous sites that are the subject of one development
application, but do not have to be based upon individual
subdivision maps or parcels. The density bonus shall be permitted
in geographic areas of the housing development other than the
areas where the units for the lower income households are located.
(j) (1) The granting of a concession or incentive shall not require
or be interpreted, in and of itself, to require a general plan
amendment, local coastal plan amendment, zoning change, study,
or other discretionary approval. For purposes of this subdivision,
“study” does not include reasonable documentation to establish
eligibility for the concession or incentive or to demonstrate that
the incentive or concession meets the definition set forth in
subdivision (k). This provision is declaratory of existing law.
(2) Except as provided in subdivisions (d) and (e), the granting
of a density bonus shall not require or be interpreted to require the
waiver of a local ordinance or provisions of a local ordinance
unrelated to development standards.
(k) For the purposes of this chapter, concession or incentive
means any of the following:
(1) A reduction in site development standards or a modification
of zoning code requirements or architectural design requirements
that exceed the minimum building standards approved by the
California Building Standards Commission as provided in Part 2.5
(commencing with Section 18901) of Division 13 of the Health
and Safety Code, including, but not limited to, a reduction in
setback and square footage requirements and in the ratio of
vehicular parking spaces that would otherwise be required that
results in identifiable and actual cost reductions, to provide for
affordable housing costs, as defined in Section 50052.5 of the
Health and Safety Code, or for rents for the targeted units to be
set as specified in subdivision (c).
(2) Approval of mixed-use zoning in conjunction with the
housing project if commercial, office, industrial, or other land uses
will reduce the cost of the housing development and if the
commercial, office, industrial, or other land uses are compatible
with the housing project and the existing or planned development
in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the
developer or the city, county, or city and county that result in
identifiable and actual cost reductions to provide for affordable
housing costs, as determined by the developer and as defined in
Section 50052.5 of the Health and Safety Code, or for rents for
the targeted units to be set as specified in subdivision (c).

(i) Subdivision (k) does not limit or require the provision of
direct financial incentives for the housing development, including
the provision of publicly owned land, by the city, county, or city
and county, or the waiver of fees or dedication requirements.

(m) This section does not supersede or in any way alter or lessen
the effect or application of the California Coastal Act of 1976
(Division 20 (commencing with Section 30000) of the Public
Resources Code). Any density bonus, concessions, incentives,
waivers or reductions of development standards, and parking ratios
to which the applicant is entitled under this section shall be
permitted in a manner that is consistent with this section and
Division 20 (commencing with Section 30000) of the Public
Resources Code.

(n) If permitted by local ordinance, nothing in this section shall
be construed to prohibit a city, county, or city and county from
granting a density bonus greater than what is described in this
section for a development that meets the requirements of this
section or from granting a proportionately lower density bonus
than what is required by this section for developments that do not
meet the requirements of this section.

(o) For purposes of this section, the following definitions shall
apply:

(1) “Development standard” includes a site or construction
condition, including, but not limited to, a height limitation, a
setback requirement, a floor area ratio, an onsite open-space
requirement, or a parking ratio that applies to a residential
development pursuant to any ordinance, general plan element,
specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) “Lower income student” means a student who has a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients as set forth in paragraph (1) of subdivision (k) of Section 69432.7 of the Education Code. The eligibility of a student to occupy a unit for lower income students under this section shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education in which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid, including an institutional grant or fee waiver from the college or university, the California Student Aid Commission, or the federal government.

(3) “Maximum allowable residential density” means the density allowed under the zoning ordinance and land use element of the general plan, or, if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(4) “Total units” or “total dwelling units” means a calculation of the number of units that:

(A) Excludes a unit added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(B) Includes a unit designated to satisfy an inclusionary zoning requirement of a city, county, or city and county.

(p) (1) Except as provided in paragraphs (2), (3), and (4), upon the request of the developer, a city, county, or city and county shall not require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivisions (b) and (c), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) Notwithstanding paragraph (1), if a development includes the maximum percentage of moderate-income, low-income, or very low income units provided for in paragraph (1), (2), or (5) of subdivision (f) and is located within one-half mile of a major transit...
stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and the residents of the development have unobstructed access to the major transit stop from the development, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds 0.5 spaces per bedroom. For purposes of this subdivision, “unobstructed access to the major transit stop” means a resident is able to access the major transit stop without encountering natural or constructed impediments.

(3) Notwithstanding paragraph (1), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose a vehicular parking ratio, inclusive of handicapped and guest parking, that exceeds the following ratios:

(A) If the development is located within one-half mile of a major transit stop, as defined in subdivision (b) of Section 21155 of the Public Resources Code, and the residents of the development have unobstructed access to the major transit stop from the development, the ratio shall not exceed 0.5 spaces per unit.

(B) The ratio shall not exceed 0.5 spaces per unit if the development meets both of the following requirements:

(i) The development is a for-rent housing development for individuals who are 62 years of age or older that complies with Sections 51.2 and 51.3 of the Civil Code.

(ii) The residents of the development have either access to paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(4) Notwithstanding paragraphs (1) and (8), if a development consists solely of rental units, exclusive of a manager’s unit or units, with an affordable housing cost to lower income families, as provided in Section 50052.5 of the Health and Safety Code, and the development is either a special needs housing development, as defined in Section 51312 of the Health and Safety Code, or a supportive housing development, as defined in Section 50675.14 of the Health and Safety Code, then, upon the request of the developer, a city, county, or city and county shall not impose any minimum vehicular parking requirement. A development that is
a special needs housing development shall have either paratransit service or unobstructed access, within one-half mile, to fixed bus route service that operates at least eight times per day.

(5) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking.

(6) This subdivision shall apply to a development that meets the requirements of subdivisions (b) and (c), but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

(7) This subdivision does not preclude a city, county, or city and county from reducing or eliminating a parking requirement for development projects of any type in any location.

(8) Notwithstanding paragraphs (2) and (3), if a city, county, city and county, or an independent consultant has conducted an areawide or jurisdictionwide parking study in the last seven years, then the city, county, or city and county may impose a higher vehicular parking ratio not to exceed the ratio described in paragraph (1), based upon substantial evidence found in the parking study, that includes, but is not limited to, an analysis of parking availability, differing levels of transit access, walkability access to transit services, the potential for shared parking, the effect of parking requirements on the cost of market-rate and subsidized developments, and the lower rates of car ownership for low-income and very low income individuals, including seniors and special needs individuals. The city, county, or city and county shall pay the costs of any new study. The city, county, or city and county shall make findings, based on a parking study completed in conformity with this paragraph, supporting the need for the higher parking ratio.

(9) A request pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(q) Each component of any density calculation, including base density and bonus density, resulting in fractional units shall be
separately rounded up to the next whole number. The Legislature finds and declares that this provision is declaratory of existing law.

(r) This chapter shall be interpreted liberally in favor of producing the maximum number of total housing units.

(s) (1) The Legislature finds and declares that the intent behind the Density Bonus Law is to allow public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable units. It further reaffirms that the intent is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy.

(2) It is therefore the intent of the Legislature to make modifications to the Density Bonus Law by the act adding this subdivision to further incentivize the construction of very low, low-, and moderate-income housing units. It is further the intent of the Legislature in making these modifications to the Density Bonus Law to ensure that any additional benefits conferred upon a developer are balanced with the receipt of a public benefit in the form of adequate levels of affordable housing. The Legislature further intends that these modifications will ensure that the Density Bonus Law creates incentives for the construction of more housing across all areas of the state.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy 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.
Item B-11
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: July 10, 2020
SUBJECT: SB 1120 (Atkins) - Subdivisions: Tentative Maps
ATTACHMENTS: 1. Summary Memo – SB 1120
2. Bill Text – SB 1120

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

SB 1120 (Atkins) - Subdivisions: Tentative Maps (SB 1120) involves a policy matter that may not specifically addressed within the adopted Legislative Platform language. Some of the items in the legislative platform which may apply to SB 1120 include, but are not limited to:

- Support legislation that preserves local control.
- Support legislation that protects local control over urban planning.
- Oppose state legislation that supersedes a jurisdiction’s adopted zoning ordinances.
- Oppose preemption of the City of Beverly Hills’ local authority whether by state or federal legislation or ballot propositions.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 1120 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 1120, the Liaisons may recommend the following actions:
1) Support SB 1120;
2) Support if amended SB 1120;
3) Oppose SB 1120;
4) Oppose unless amended SB 1120;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 1120, then staff will place the item on a future City Council Agenda for concurrence should an adopted City Council priority within the City’s Legislative Platform not apply to this bill. Should there be a correlation between the bill and the City’s Legislative Platform, then staff will draft a letter for the Mayor to sign.
Attachment 1
Introduction and Background

SB 1120 would, among other things, require a proposed housing development containing two residential units to be considered ministerially, without discretionary review or hearing, in zones where allowable uses are limited to single-family residential development if the proposed housing development meets certain requirements, including that the proposed housing development would not require demolition or alteration requiring evacuation or eviction of an existing housing unit 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. Specifically, this bill would:

- Require cities and counties to permit ministerially a duplex located in a single-family zone or the subdivision of a parcel, zoned for residential use, into two equal parcels.
- Require a development or subdivided parcel to be located within an urbanized area or urban cluster, and cannot be located on any of the following:
  - Land within the very high fire hazard severity zone, unless the development complies with state mitigation requirements;
  - An earthquake fault zone;
  - A site located within a historic district that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
- Prohibit the construction of a duplex that would require the demolition or alteration of affordable housing, rent-controlled housing, Ellis Act housing, more than 25 percent of the exterior walls of an existing structure (unless a local ordinance allows greater demolition), or any housing that has been occupied by a tenant in the past three years.
- Allow a city or county to impose objective zoning and design standards (height, setbacks, etc.).
- Prohibits a city or county from requiring a project to comply with any standard that would prevent two units from being built.
- Prohibits the units from being rented for less than 30 days.
• Require a city or county to ministerially approve or deny a parcel map for an urban lot split on eligible lots that meet the following requirements:
  o The parcel map subdivides an existing parcel, that was not created through a previous urban lot split, to create two new parcels of equal size.
  o Both newly created parcels are no smaller than 1,200 square feet, unless the local agency adopts a smaller minimum lot size.
  o The parcel does not contain rent-restricted housing, housing where an owner has exercised their rights under the Ellis Act within the past 15 years, or housing that has been occupied by tenants in the past three years.
  o Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split.

• Allows a local agency to impose objective zoning and design standards that do not conflict with the bill, so long as those standards do not reduce the buildable area, on each newly created parcel to less than 50 percent of the buildable area on the parcel being subdivided.

• Limit the parking that local agencies may require for both urban lot splits and duplexes to no more than one space per unit, except that local agencies cannot require any parking for developments within ½ mile walking distance from a major transit stop or a stop on a high frequency bus line, or one block from a car share vehicle.

• Allow a local agency to adopt an ordinance to implement the urban lot split requirements and the duplex provisions and provides that those ordinances are not a project under the California Environmental Quality Act.

• Prohibit the development of accessory dwelling units on parcels that use both the urban lot split and duplex provisions of this bill.

• Allow local governments to extend the life of subdivision maps by one year for up to a total of four years.

According to the author, SB 1120 (Atkins) was introduced as part of the Senate’s housing package. This measure builds off state Accessory Dwelling Unit (ADU) law that allows for at least three units/parcel; further, it encourages small-scale neighborhood development spearheaded by homeowners by creating a ministerial approval process for duplexes and lot splits that meet local zoning, environmental, and tenant displacement standards.

The author argues that SB 1120 promotes small-scale neighborhood residential development by streamlining the process for a homeowner to create a duplex or subdivide an existing lot in all residential areas. The author also argues the bill leverages valuable but previously untapped resources, such as developed but underutilized land, while building valuable equity for homeowners.

Cities and counties adopt local subdivision ordinances to carry out the Subdivision Map Act and local requirements. The Map Act authorizes local officials to require, as a condition of approving
a proposed subdivision, the dedication of property within a subdivision for streets, alleys, drainage, utility easements, and other public easements and improvements. Once subdivider comply with those conditions, local officials must issue final maps.

For smaller subdivisions that create four or fewer parcels, local officials usually use parcel maps, but they can require tentative parcel maps followed by final parcel maps. The Map Act also constrains the dedications and improvements that local cities and counties can require as a condition of a subdivision of four or fewer lots to only the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created.

SB 1120 allows duplexes to be built in many single-family zones, even if local officials and residents have said they do not want them, and it allows for the creation of smaller parcels than local governments would allow on their own. Some local jurisdictions have raised concerns about whether SB 1120 is a flexible enough bill to account for the variation in local communities.

Note: The League of California Cities currently has a ‘Watch’ position on this bill.

**Status of Legislation**
This bill is pending in the Assembly Local Government Committee.

**Support**
American Planning Association  
California Chapter Associated Builders and Contractors  
   Northern California Chapter Bay Area Council  
California Apartment Association  
California Association of Realtors  
Facebook  
Habitat for Humanity  
California Livable Sunnyvale  
San Francisco Housing Action Coalition  
Schneider Electric  
United Dwelling

**Opposition**
Brentwood Homeowners Association  
Cities Association of Santa Clara County  
City of Hawthorne  
City of Newport Beach  
City of Orinda  
City of Pasadena  
City of Thousand Oaks  
City of Torrance  
Contra Costa Taxpayers Association  
Livable California  
Orinda Watch  
Sherman Oaks Homeowners Association  
South Bay Cities Council of Governments  
Sustainable Tamalmonte
Attachment 2
An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL’S DIGEST

SB 1120, as amended, Atkins. Subdivisions: tentative maps.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill would, among other things, require a proposed housing development containing 2 residential units to be considered ministerially, without discretionary review or hearing, in zones where allowable uses are limited to single-family residential development if the proposed housing development meets certain requirements, including that the proposed housing development would not require demolition or alteration requiring evacuation or eviction of an existing housing unit 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.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of
a local agency and sets forth procedures governing the local agency’s processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24 months after its approval or conditional approval, or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill would require a city or county to ministerially approve a parcel map for an urban lot split that meets certain requirements, including that the parcel does not contain 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.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

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. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that 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 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.

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

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing two residential units shall be considered ministerially, without discretionary review or a hearing, in zones where allowable uses are limited to single-family residential development, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) The proposed housing development would not require demolition or alteration requiring evacuation or eviction of an existing housing unit of any of the following types of housing:

(A) 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.

(B) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.

(C) A parcel on which an owner of residential real property has exercised the owner’s rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application pursuant to Section 65913.4.

(D) Housing that has been occupied by a tenant in the last three years.

(4) The development is not located on a site that has been placed on a national, state, or local historic register, within a historic district, as defined in Section 5020.1 of the Public Resources Code, that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.
(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a city or county may impose objective zoning and design standards that do not conflict with this section.

(2) The city or county shall not require the development project to comply with an objective design standard that would prohibit the development from including up to two units.

(c) (1) Except as provided in paragraph (2), subject to a local ordinance that provides for a lower standard of parking, the proposed development shall provide offstreet parking of up to one space per unit.

(2) A local agency shall not impose parking requirements if any of the following is true:

(A) The parcel is located within one-half mile walking distance of public transit, either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) The parcel is located within an architecturally and historically significant historic district.

(C) There is a car share vehicle located within one block of the parcel.

(d) (1) Except as provided in paragraphs (2) and (3), the proposed housing development described in subdivision (a) shall not require the demolition of more than one existing exterior wall:

25 percent of the existing exterior structural walls.

(2) A proposed housing development may require the demolition of more than one existing exterior wall 25 percent of the existing exterior structural walls if a local ordinance so allows.

(3) A proposed housing development may require the demolition of more than one existing exterior wall 25 percent of the existing exterior structural walls if the site has not been occupied by a tenant in the last three years.

(e) A local agency may require, as part of the application for a permit to create, pursuant to this section, a duplex connected to an onsite water treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(f) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.
(e) Notwithstanding Section 65852.2, a local agency shall not be required to permit an accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(f) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a city or county shall ministerially approve a parcel map for an urban lot split that meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create two new parcels of equal size.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size to approve ministerially under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is zoned for residential use.

(B) The parcel is located within an urbanized area or urban cluster.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The parcel does not contain any of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner’s rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to
withdraw accommodations from rent or lease within 15 years
before the date that the development proponent submits an
application pursuant to Section 65913.4.

(iv) Housing that has been occupied by a tenant in the last three
years.

(E) The parcel is not located on a site that has been placed on
a national, state, or local historic register within a historic district,
as defined in Section 5020.1 of the Public Resources Code, that
is designated or listed as a city or county landmark or historic
property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise
of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor
any person acting in concert with the owner has not previously
subdivided an adjoining adjacent parcel using an urban lot split
as provided for in this section.

(b) An application for an urban lot split shall be approved in
accordance with the following requirements:

(1) A local agency shall approve or deny an application for an
urban lot split ministerially without discretionary review.

(2) Notwithstanding Section 66411.1, a local agency shall not
impose regulations that require dedications of rights-of-way or the
construction of reasonable offsite and onsite improvements for the
parcels being created as a condition of issuing a parcel map for an
urban lot split.

(c) A local agency may require any of the following conditions
when receiving a request for an urban lot split:

(1) Easements.

(2) A requirement that the parcels have access to, provide access
to, or adjoin the public right-of-way.

(3) Offstreet parking of up to one space per unit, except that a
local agency shall not impose parking requirements in
any either
of the following instances:

(A) The parcel is located within one-half mile walking distance
of public transit, either a high-quality transit corridor as defined
in subdivision (b) of Section 21155 of the Public Resources Code,
or a major transit stop as defined in Section 21064.3 of the Public
Resources Code.

(B) The parcel is located within an architecturally and
historically significant historic district.
(B) There is a car share vehicle located within one block of the parcel.

d) (1) Except as provided in paragraph (2), notwithstanding any local law, a city or county may impose objective zoning and objective design standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) (A) A local agency shall not impose objective zoning or objective design standards that reduce the buildable area on each newly created parcel to less than 50 percent of the buildable area on the parcel being subdivided.

(B) For the purposes of this paragraph, “buildable area” means the area on the lot that remains after the application of zoning and design standards and regulations that require dedications of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2, a local agency shall not be required to permit an accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 65852.21.

(g) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars ($236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property
to be subdivided and which are reasonably related to the
development of that property, each filing of a final map authorized
by Section 66456.1 shall extend the expiration of the approved or
conditionally approved tentative map by 48 months from the date
of its expiration, as provided in this section, or the date of the
previously filed final map, whichever is later. The extensions shall
not extend the tentative map more than 10 years from its approval
or conditional approval. However, a tentative map on property
subject to a development agreement authorized by Article 2.5
(commencing with Section 65864) of Chapter 4 of Division 1 may
be extended for the period of time provided for in the agreement,
but not beyond the duration of the agreement. The number of
phased final maps that may be filed shall be determined by the
advisory agency at the time of the approval or conditional approval
of the tentative map.
(2) Commencing January 1, 2012, and each calendar year
thereafter, the amount of two hundred thirty-six thousand seven
hundred ninety dollars ($236,790) shall be annually increased by
operation of law according to the adjustment for inflation set forth
in the statewide cost index for class B construction, as determined
by the State Allocation Board at its January meeting. The effective
date of each annual adjustment shall be March 1. The adjusted
amount shall apply to tentative and vesting tentative maps whose
applications were received after the effective date of the
adjustment.
(3) “Public improvements,” as used in this subdivision, include
traffic controls, streets, roads, highways, freeways, bridges,
overcrossings, street interchanges, flood control or storm drain
facilities, sewer facilities, water facilities, and lighting facilities.
(b) (1) The period of time specified in subdivision (a), including
any extension thereof granted pursuant to subdivision (e), shall
not include any period of time during which a development
moratorium, imposed after approval of the tentative map, is in
existence. However, the length of the moratorium shall not exceed
five years.
(2) The length of time specified in paragraph (1) shall be
extended for up to three years, but in no event beyond January 1,
1992, during the pendency of any lawsuit in which the subdivider
asserts, and the local agency which approved or conditionally
approved the tentative map denies, the existence or application of
a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map
shall be valid for the same period of time as was left to run on the
map at the time that the moratorium was imposed. However, if the
remaining time is less than 120 days, the map shall be valid for
120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including
any extension thereof granted pursuant to subdivision (e), shall
not include the period of time during which a lawsuit involving
the approval or conditional approval of the tentative map is or was
pending in a court of competent jurisdiction, if the stay of the time
period is approved by the local agency pursuant to this section.

After service of the initial petition or complaint in the lawsuit upon
the local agency, the subdivider may apply to the local agency for
a stay pursuant to the local agency’s adopted procedures. Within
40 days after receiving the application, the local agency shall either
stay the time period for up to five years or deny the requested stay.
The local agency may, by ordinance, establish procedures for
reviewing the requests, including, but not limited to, notice and
hearing requirements, appeal procedures, and other administrative
requirements.

(d) The expiration of the approved or conditionally approved
tentative map shall terminate all proceedings and no final map or
parcel map of all or any portion of the real property included within
the tentative map shall be filed with the legislative body without
first processing a new tentative map. Once a timely filing is made,
subsequent actions of the local agency, including, but not limited
to, processing, approving, and recording, may lawfully occur after
the date of expiration of the tentative map. Delivery to the county
surveyor or city engineer shall be deemed a timely filing for
purposes of this section.

(e) Upon application of the subdivider filed before the expiration
of the approved or conditionally approved tentative map, the time
at which the map expires pursuant to subdivision (a) may be
extended by the legislative body or by an advisory agency
authorized to approve or conditionally approve tentative maps for
a period or periods not exceeding a total of six years. The period
of extension specified in this subdivision shall be in addition to
the period of time provided by subdivision (a). Before the
expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider’s application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium
specified in this paragraph shall extend the tentative map up to the
maximum period as set forth in subdivision (b), but not later than
January 1, 1992, so long as the public agency which owns or
controls the real property or any interest therein fails or refuses to
convey the necessary property interest, regardless of the reason
for the failure or refusal, except that the development moratorium
shall be deemed to terminate 60 days after the public agency has
officially made, and communicated to the subdivider, a written
offer or commitment binding on the agency to convey the necessary
property interest for a fair market value, paid in a reasonable time
and manner.

SEC. 4. The Legislature finds and declares that ensuring access
to affordable housing is a matter of statewide concern and not a
municipal affair as that term is used in Section 5 of Article XI of
the California Constitution. Therefore, Sections 1 and 2 of this act
adding Sections 65852.21 and 66411.7 to the Government Code
and Section 3 of this act amending Section 66452.6 of the
Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
a local agency or school district has the authority to levy service
charges, fees, or assessments sufficient to pay for the program or
level of service mandated by this act, within the meaning of Section
Item B-12
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

SB 1385 (Caballero) - Local Planning: Housing: Commercial Zones (SB 1385) involves a policy matter that may not specifically addressed within the adopted Legislative Platform language. Some of the items in the legislative platform which may apply to SB 1385 include, but are not limited to:

- Support legislation that preserves local control.
- Support legislation that protects local control over urban planning.
- Oppose state legislation that supersedes a jurisdiction’s adopted zoning ordinances.
- Oppose preemption of the City of Beverly Hills’ local authority whether by state or federal legislation or ballot propositions.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 1385 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 1385, the Liaisons may recommend the following actions:

1) Support SB 1385;
2) Support if amended SB 1385;
3) Oppose SB 1385;
4) Oppose unless amended SB 1385;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 1385, then staff will place the item on a future City Council Agenda for concurrence should an adopted City Council priority within the City’s Legislative Platform not apply to this bill. Should there be a correlation between the bill and the City’s Legislative Platform, then staff will draft a letter for the Mayor to sign.
Attachment 1
July 2, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
       Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
       Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 1385 (Caballero) Local planning: housing: commercial zones.

Introduction and Background
SB 1385 was introduced by Senator Caballero and would enact the “Neighborhood Homes Act,” which establishes a housing development project as an authorized use on a neighborhood lot, defined as a lot zoned for office or retail commercial use under a local agency’s zoning code or general plan. Specifically, this bill would:

- Requires a housing development project on a neighborhood lot to comply with all of the following:
  - The density for the housing development must meet or exceed specified densities ranging from 10 to 30 units per acre, depending on whether the jurisdiction is urban, suburban, or rural. If more than one zoning designation in the city or county meets this requirement, the zoning standards that apply to a neighborhood lot are the same zoning standards that apply to the closest parcel that allows for residential use at that density. If the existing zoning on the parcel allows denser residential use, the local zoning applies.
  - The housing development is subject to local zoning, parking, design, and other ordinances, and must comply with any design review or other procedural requirements imposed by the local government, applicable to a housing development in the zone identified above. The project must comply with all other local requirements for a neighborhood lot zoned for office or retail use.
  - The project consists of entirely residential units or a mix of commercial retail, office, or residential uses, so long as it does not include any hotel uses.
  - Rental of any unit is for a period longer than 30 days.
  - Allows a local agency to exempt a lot zoned for commercial retail or office use from the bill if the local agency concurrently reallocates the lost residential density to other lots so that there is no net loss in residential production capacity, but only if the local agency finds that the construction cost of the reallocated housing units will not be greater than the construction cost of housing units built on the neighborhood lot.

- Provides that its provisions do not alter or lessen the applicability of any housing, environmental, or labor law applicable to a housing development authorized by the bill, including, but not limited to: the California Coastal Act of 1976, the California Environmental Quality Act (CEQA), the HAA, density bonus law, obligations to affirmatively further fair housing, and state or local housing and tenant protection laws.
• Provides that for the purposes of the HAA, a project is deemed consistent, compliant, and in conformity with local standards if it meets the standards applied by the bill to a neighborhood lot.
• Allows annexation of a neighborhood lot into an existing Mello-Roos CFD without the opportunity for existing CFD residents to protest.
• Allows housing developments on neighborhood lots to be eligible for SB 35’s streamlined ministerial approval process if it meets all of the following requirements:
  o The proposed project meets the objective zoning, design, and subdivision standards that apply to the neighborhood lot as a result of SB 1385;
  o The proposed project meets all of SB 35’s other requirements; and
  o The site is zoned for office or retail commercial use and 50 percent or more of its total square footage has been vacant for a period of at least three years prior to the submission of the application.
  o No portion of the project is designated for hotel use.

The author argues that as retail vacancies are growing while California’s housing crisis continues to worsen. According to the California Budget and Policy Center, over 50 percent of renters and nearly 40 percent of homeowners pay more than 30 percent of their income in rent. In addition, the Public Policy Institute of California recently reported that California’s housing shortage continues to grow as the number of residential building permits issued for 2018 and 2019 were far below the recommended annual average of new homes needed. While there is no single policy to fix California’s housing crisis, providing easy ways for cities to increase their housing supply is a step in the right direction, and SB 1385 will do just that.

Opponents argue that local governments have historically separated uses to avoid siting incompatible activities, such as production agriculture and residential activity, near one another. This approach also mitigates potential public health issues, such as air pollution impacts from heavy industrial uses on nearby residents. SB 1385 allows residential use on properties that are zoned instead for office and retail uses, and thereby contravenes this principle. The bill would also undermine the planning decisions made by local officials, who established which uses are allowed and at what intensity. In addition, SB 1385 allows relatively intense residential uses—up to 30 units an acre in some jurisdictions—on parcels that may have been set aside for lower intensity retail activities that do not bring many customers to an area. This may pose a particular challenge for rural jurisdictions.

Note: The League of California Cities currently has a ‘Watch’ position on this bill.

**Status of Legislation**
This bill is pending in the Assembly Local Government Committee.

**Support**
- California Forward Action Fund (source)
- Abundant Housing LA
- Associated Builders and Contractors
- Northern California Chapter
- Bay Area Council
- California Apartment Association
- California Association of Realtors
- California Building Industry Association
- California Community Builders
- California Downtown Association
- California YIMBY
- Central City Association
- Facebook
- Habitat for Humanity California
- Habitat for Humanity Greater San Francisco
- Housing Land Trust of Sonoma County
- North Bay Leadership Council
- Orange County Business Council
People for Housing - Orange County
San Francisco Bay Area Planning and
Urban Research Association
San Francisco Housing Action Coalition
Schneider Electric
Sherman Oaks Homeowners Association

Sierra Business Council
Silicon Valley At Home
United Latinos Vote
Valley Industry & Commerce Association
Westfield
YIMBY Law

**Opposition**
City of Fairfield
City of Orinda
City of Pasadena
City of Torrance
Contra Costa Taxpayers Association
Livable California
Orinda Watch
Attachment 2
An act to amend Sections 53339.6 and 65913.4 of, and to add Section 65852.23 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1385, as amended, Caballero. Local planning: housing: commercial zones.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development, and the development of certain lands outside its boundaries, that includes, among other mandatory elements, a housing element. Existing law requires that the housing element include, among other things, an inventory of land suitable and available for residential development. If the inventory of sites does not identify adequate sites to accommodate the need for groups of all households pursuant to specified law, existing law requires the local government to rezone sites within specified time periods and that this rezing accommodate 100% of the need for housing for very low and low-income households on sites that will be zoned to permit owner-occupied and rental multifamily residential use by right for specified developments.
This bill, the Neighborhood Homes Act, would deem a housing development project, as defined, an authorized allowable use on a neighborhood lot that is zoned for office or retail commercial use under a local agency’s zoning code or general plan. The bill would require the density for a housing development under these provisions to meet or exceed the density deemed appropriate to accommodate housing for lower income households according to the type of local jurisdiction, including a density of at least 20 units per acre for a suburban jurisdiction. The bill would require the housing development to meet all other local requirements for a neighborhood lot zoned for office or retail commercial use, other than those that prohibit residential use, or allow residential use at a lower density than that required by the bill. The bill would provide that a housing development under these provisions is subject to the local zoning, parking, and design ordinances, and any design review or other public notice, comment, hearing, or procedure applicable to a housing development in a zone with the applicable density. The bill would provide that the local zoning designation applies if the existing zoning designation for the parcel allows residential use at a density greater than that required by these provisions. The bill would require a local agency to require that a rental of any unit created pursuant to the bill’s provisions be for a term longer than 30 days. The bill would authorize a local agency that met its share of the regional housing need, as specified, to exempt a neighborhood lot from these provisions if the local agency concurrently reallocates the lost residential density to other lots so that there is no net loss in residential production capacity in the jurisdiction. The bill would specify that it does not alter or affect the application of any housing, environmental, or labor law applicable to a housing development authorized by these provisions, including, but not limited to, the California Coastal Act, the California Environmental Quality Act, the Housing Accountability Act, obligations to affirmatively further fair housing, and any state or local affordability laws or tenant protection laws. The bill would require an applicant of a housing development under these provisions to provide notice of a pending application to each commercial tenant of the neighborhood lot.

The Housing Accountability Act, which is part of the Planning and Zoning Law, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project, as defined for purposes of the act, for very low, low-, or moderate-income households or an emergency shelter unless the local
agency makes specified written findings based on a preponderance of
the evidence in the record. That act states that it shall not be construed
to prohibit a local agency from requiring a housing development project
to comply with objective, quantifiable, written development standards,
conditions, and policies appropriate to, and consistent with, meeting
the jurisdiction’s share of the regional housing need, except as provided.
That act further provides that a housing development project or
emergency shelter shall be deemed consistent, compliant, and in
conformity with an applicable plan, program, policy, ordinance,
standard, requirement, or other similar provision if there is substantial
evidence that would allow a reasonable person to conclude that the
housing development project or emergency shelter is consistent,
compliant, or in conformity.

The bill would provide that for purposes of the Housing
Accountability Act, a proposed housing development project is
consistent, compliant, and in conformity with an applicable plan,
program, policy, ordinance, standard, requirement, or other similar
 provision if the housing development project is consistent with the
standards applied to the parcel pursuant to specified provisions of the
Neighborhood Homes Act. Act and if none of the square footage in the
project is designated for hotel, motel, bed and breakfast inn, or other
transient lodging use, except for a residential hotel, as defined.

The Planning and Zoning Law, until January 1, 2026, also authorizes
a development proponent to submit an application for a multifamily
housing development that is subject to a streamlined, ministerial
approval process, as provided, and not subject to a conditional use
permit, if the development satisfies specified objective planning
standards, including a requirement that the site on which the
development is proposed is zoned for residential use or residential
mixed-use development, or has a general plan designation that allows
residential use or a mix of residential and nonresidential uses, with at
least \( \frac{2}{3} \) of the square footage of the development designated for
residential use. Under that law, the proposed development is also
required to be consistent with objective zoning standards, objective
subdivision standards, and objective design review standards in effect
at the time the development is submitted to the local government.

This bill would permit the development to be proposed for a site
zoned for office or retail commercial use if the site has no existing
commercial or residential tenants on 50% or more of its total square
footage for a period of at least 3 years prior to the submission of the
application. The bill would also provide that a project located on a neighborhood lot, as defined, shall be deemed consistent with objective zoning standards, objective design standards, and objective subdivision standards if the project meets the standards applied to the parcel pursuant to the Neighborhood Homes Act.

The Mello-Roos Community Facilities Act of 1982 authorizes a local agency to establish a community facilities district to finance various services, including police protection, fire protection, recreation programs, and library services, and provides for the annexation of territory to an existing community facilities district.

This bill would authorize an applicant seeking to develop a housing project on a neighborhood lot to request that a local agency establish a Mello-Roos Community Facilities District, or to request that the neighborhood lot be annexed to an existing community facilities district, as specified, to finance improvements and services to the units proposed to be developed. The bill would prohibit any further proceedings to be taken to annex the territory, or to authorize that annexation in the future, for a period of one year from the decision of the legislative body at the hearing on the annexation if a specified number or groups of persons, including 50% or more of the registered voters or 6 registered voters, whichever is more, residing within the territory proposed for annexation or proposed to be annexed in the future, file written protests with the legislative body. The bill would prohibit a local agency from imposing any development, impact, or mitigation fee, charge, or exaction in connection with the approval of a development project to the extent that those facilities and services are funded by a community facilities district established pursuant to these provisions.

By imposing new duties on local agencies with regard to local planning and zoning, 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.

SECTION 1. Section 53339.6 of the Government Code is amended to read:

53339.6. (a) If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the existing community facilities district, or if 50 percent or more of the registered voters or six registered voters, whichever is more, residing within the territory proposed for annexation or proposed to be annexed in the future, or if the owners of one-half or more of the area of land in the territory included in the existing district and not exempt from special tax, or if the owners of one-half or more of the area of land in the territory proposed to be annexed or proposed to be annexed in the future and not exempt from the special tax, file written protests against the proposed annexation of territory to the existing community facilities district or the proposed addition of territory to the existing community facilities district in the future, and protests are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to annex the same territory, or to authorize the same territory to be annexed in the future, shall be undertaken for a period of one year from the date of decision of the legislative body on the issues discussed at the hearing.

(b) (1) This subdivision shall only apply to a proceeding to annex or add territory that is zoned to allow residential use on a neighborhood lot as provided in Section 65852.23.

(2) Notwithstanding subdivision (a), if 50 percent or more of the registered voters or six registered voters, whichever is more, residing within the territory proposed for annexation or proposed to be annexed in the future, or if the owners of one-half or more of the area of land in the territory proposed to be annexed or proposed to be annexed in the future and not exempt from the special tax, file written protests against the proposed annexation of territory to the existing community facilities district or the proposed addition of territory to the existing community facilities district in the future, and protests are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to annex the same territory, or to authorize the same territory to be annexed in the future, shall be undertaken for a period of one year from the
date of decision of the legislative body on the issues discussed at
the hearing.
SEC. 2. Section 65852.23 is added to the Government Code,
to read:
65852.23. (a) (1) This section shall be known, and may be
cited, as the Neighborhood Homes Act.
(2) The Legislature finds and declares that creating more
affordable housing is critical to the achievement of regional
housing needs assessment goals, and that housing units developed
at higher densities are affordable by design for California residents,
without the necessity of public subsidies, income eligibility,
occupancy restrictions, lottery procedures, or other legal
requirements applicable to deed restricted affordable housing to
serve very low and low-income residents and special needs
residents.
(b) A housing development project shall be deemed an
authorized allowable use on a neighborhood lot that is zoned for
office or retail commercial use under a local agency’s zoning code
or general plan. A housing development on a neighborhood lot
authorized under this section shall be subject to all of the following:
(1) (A) The density for the housing development shall meet or
exceed the applicable density deemed appropriate to accommodate
housing for lower income households identified in subparagraph
(B) of paragraph (3) of subdivision (e) of Section 65583.2, as
follows:
(i) For an incorporated city within a nonmetropolitan county
and for a nonmetropolitan county that has a micropolitan area,
sites allowing at least 15 units per acre.
(ii) For an unincorporated area in a nonmetropolitan county
not included in subparagraph (A), sites allowing at least 10 units
per acre.
(iii) For a suburban jurisdiction, sites allowing at least 20 units
per acre.
(iv) For a jurisdiction in a metropolitan county, sites allowing
at least 30 units per acre.
(B) “Metropolitan county,” “nonmetropolitan county,”
“nonmetropolitan county with a micropolitan area,” and
“suburban,” shall have the same meanings as defined in
subdivisions (d), (e), and (f) of Section 65583.2.
(2) (A) The housing development shall be subject to local zoning, parking, design, and other ordinances applicable to a housing development in a zone that meets the requirements of paragraph (1).

(B) If more than one zoning designation of the local agency meets the requirements of paragraph (1), the zoning standards applicable to a parcel that allows residential use pursuant to this section shall be the zoning standards that apply to the closest parcel that allows residential use at a density that meets the requirements of paragraph (1).

(C) If the existing zoning designation for the parcel, as adopted by the local government, allows residential use at a density greater than that required in paragraph (1), the local zoning designation shall apply.

(3) The housing development shall comply with any design review or other public notice, comment, hearing, or procedure imposed by the local agency on a housing development in the applicable zoning designation identified in paragraph (2).

(4) All other local requirements for a neighborhood lot zoned for office or retail commercial use, other than those that prohibit residential use, or allow residential use at a lower density than provided in paragraph (1).

(c) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(d) (1) A local agency may exempt a neighborhood lot from this section in its housing element if the local agency concurrently reallocates the lost residential density to other lots so that there is no net loss in residential production capacity in the jurisdiction.

(2) A local agency may reallocate the residential density from an exempt neighborhood lot pursuant to this subdivision only upon a finding by the local agency that the construction cost of the reallocated housing units will not be greater than the construction cost of housing units built under the applicable zoning standards in paragraph (2) of subdivision (b).

(e) (1) This section does not alter or lessen the applicability of any housing, environmental, or labor law applicable to a housing development authorized by this section, including, but not limited to, the following:
(A) The California Coastal Act of 1976 (Division 20
(commencing with Section 30000) of the Public Resources Code)
(B) The California Environmental Quality Act (Division 13
(commencing with Section 21000) of the Public Resources Code).
(C) The Housing Accountability Act (Section 65589.5).
(D) The Density Bonus Law (Section 65915).
(E) Obligations to affirmatively further fair housing, pursuant
to Section 8899.50.
(F) State or local affordable housing laws.
(G) State or local tenant protection laws.
(2) All local demolition ordinances shall apply to a project
developed on a neighborhood lot.
(3) For purposes of the Housing Accountability Act (Section
65589.5), a proposed housing development project that is consistent
with the standards applied to the parcel pursuant to paragraph (2)
of subdivision (b) shall be deemed consistent, compliant, and in
conformity with an applicable plan, program, policy, ordinance,
standard, requirement, or other similar provision.
(f) An applicant for a housing development under this section
shall provide written notice of the pending application to each
commercial tenant on the neighborhood lot when the application
is submitted.
(g) (1) An applicant seeking to develop a housing project on a
neighborhood lot may request that a local agency establish a
Mello-Roos Community Facilities District, or may request that
the neighborhood lot be annexed to an existing community facilities
district, as authorized in Chapter 2.5 (commencing with Section
53311) of Part 1 of Division 2 of Title 5 to finance improvements
and services to the units proposed to be developed.
(2) An annexation to a community facilities district for a
neighborhood lot shall be subject to a protest proceeding as
provided in subdivision (b) of Section 53339.6.
(3) An applicant who voluntarily enrolls in the district shall not
be required to pay a development, impact, or mitigation fee, charge,
or exaction in connection with the approval of a development
project to the extent that those facilities and services are funded
by a community facilities district established pursuant to this
subdivision. This paragraph shall not prohibit a local agency from
imposing any application, development, mitigation, building, or
other fee to fund the construction cost of public infrastructure
facilities or services that are not funded by a community facilities
district to support a housing development project.

(h) For purposes of this section:

(1) “Housing development project” means a use consisting of
any of the following:
(A) Residential units only.
(B) Mixed-use developments consisting of residential and
nonresidential commercial retail or office uses. *None of the square
footage of any such development shall be designated for hotel,
motel, bed and breakfast inn, or other transient lodging use, except
for a residential hotel.*
(2) “Local agency” means a city, including a charter city, county,
or a city and county.
(3) “Neighborhood lot” means a lot zoned for office or retail
commercial uses and an eligible site for a housing development
project pursuant to subdivision (b).
(4) “Residential hotel” has the same meaning as defined in
Section 50519 of the Health and Safety Code.

SEC. 3. Section 65913.4 of the Government Code is amended
to read:

65913.4. (a) A development proponent may submit an
application for a development that is subject to the streamlined,
ministerial approval process provided by subdivision (b) and is
not subject to a conditional use permit if the development satisfies
all of the following objective planning standards:
(1) The development is a multifamily housing development that
contains two or more residential units.
(2) The development is located on a site that satisfies all of the
following:
(A) A site that is a legal parcel or parcels located in a city if,
and only if, the city boundaries include some portion of either an
urbanized area or urban cluster, as designated by the United States
Census Bureau, or, for unincorporated areas, a legal parcel or
parcels wholly within the boundaries of an urbanized area or urban
cluster, as designated by the United States Census Bureau.
(B) A site in which at least 75 percent of the perimeter of the
site adjoins parcels that are developed with urban uses. For the
purposes of this section, parcels that are only separated by a street
or highway shall be considered to be adjoined.
(C) (i) A site that meets the requirements of clause (ii) and
satisfies any of the following:
   (I) The site is zoned for residential use or residential mixed-use
development.
   (II) The site has a general plan designation that allows residential
use or a mix of residential and nonresidential uses.
   (III) The site is zoned for office or retail commercial use and
has no existing commercial or residential tenants on 50 percent or
more of its total square footage for a period of at least three years
prior to the submission of the application.
   (ii) A development on a site described in clause (i) shall have
at least two-thirds of the square footage of the development
designated for residential use. Additional density, floor area, and
units, and any other concession, incentive, or waiver of
development standards granted pursuant to the Density Bonus Law
in Section 65915 shall be included in the square footage
calculation. The square footage of the development shall not
include underground space, such as basements or underground
parking garages.
(3) (A) The development proponent has committed to record,
prior to the issuance of the first building permit, a land use
restriction or covenant providing that any lower or moderate
income housing units required pursuant to subparagraph (B) of
paragraph (4) shall remain available at affordable housing costs
or rent to persons and families of lower or moderate income for
no less than the following periods of time:
   (i) Fifty-five years for units that are rented.
   (ii) Forty-five years for units that are owned.
   (B) The city or county shall require the recording of covenants
or restrictions implementing this paragraph for each parcel or unit
of real property included in the development.
(4) The development satisfies subparagraphs (A) and (B) below:
   (A) Is located in a locality that the department has determined
is subject to this subparagraph on the basis that the number of units
that have been issued building permits, as shown on the most recent
production report received by the department, is less than the
locality’s share of the regional housing needs, by income category,
for that reporting period. A locality shall remain eligible under
this subparagraph until the department’s determination for the next
reporting period.

(B) The development is subject to a requirement mandating a
minimum percentage of below market rate housing based on one
of the following:

(i) The locality did not submit its latest production report to the
department by the time period required by Section 65400, or that
production report reflects that there were fewer units of above
moderate-income housing issued building permits than were
required for the regional housing needs assessment cycle for that
reporting period. In addition, if the project contains more than 10
units of housing, the project does either of the following:

(I) The project dedicates a minimum of 10 percent of the total
number of units to housing affordable to households making at or
below 80 percent of the area median income. However, if the
locality has adopted a local ordinance that requires that greater
than 10 percent of the units be dedicated to housing affordable to
households making below 80 percent of the area median income,
that local ordinance applies.

(II) (ia) If the project is located within the San Francisco Bay
area, the project, in lieu of complying with subclause (I), dedicates
20 percent of the total number of units to housing affordable to
households making below 120 percent of the area median income
with the average income of the units at or below 100 percent of
the area median income. However, a local ordinance adopted by
the locality applies if it requires greater than 20 percent of the units
be dedicated to housing affordable to households making at or
below 120 percent of the area median income, or requires that any
of the units be dedicated at a level deeper than 120 percent. In
order to comply with this subclause, the rent or sale price charged
for units that are dedicated to housing affordable to households
between 80 percent and 120 percent of the area median income
shall not exceed 30 percent of the gross income of the household.

(ib) For purposes of this subclause, “San Francisco Bay area”
means the entire area within the territorial boundaries of the
Counties of Alameda, Contra Costa, Marin, Napa, San Mateo,
Santa Clara, Solano, and Sonoma, and the City and County of San
Francisco.

(ii) The locality’s latest production report reflects that there
were fewer units of housing issued building permits affordable to
either very low income or low-income households by income
category than were required for the regional housing needs
assessment cycle for that reporting period, and the project seeking
approval dedicates 50 percent of the total number of units to
housing affordable to households making at or below 80 percent
of the area median income. However, if the locality has adopted
a local ordinance that requires that greater than 50 percent of the
units be dedicated to housing affordable to households making at
or below 80 percent of the area median income, that local ordinance
applies.
(iii) The locality did not submit its latest production report to
the department by the time period required by Section 65400, or
if the production report reflects that there were fewer units of
housing affordable to both income levels described in clauses (i)
and (ii) that were issued building permits than were required for
the regional housing needs assessment cycle for that reporting
period, the project seeking approval may choose between utilizing
clause (i) or (ii).
(C) (i) A development proponent that uses a unit of affordable
housing to satisfy the requirements of subparagraph (B) may also
satisfy any other local or state requirement for affordable housing,
including local ordinances or the Density Bonus Law in Section
65915, provided that the development proponent complies with
the applicable requirements in the state or local law.
(ii) A development proponent that uses a unit of affordable
housing to satisfy any other state or local affordability requirement
may also satisfy the requirements of subparagraph (B), provided
that the development proponent complies with applicable
requirements of subparagraph (B).
(iii) A development proponent may satisfy the affordability
requirements of subparagraph (B) with a unit that is restricted to
households with incomes lower than the applicable income limits
required in subparagraph (B).
(5) The development, excluding any additional density or any
other concessions, incentives, or waivers of development standards
granted pursuant to the Density Bonus Law in Section 65915, is
consistent with objective zoning standards, objective subdivision
standards, and objective design review standards in effect at the
time that the development is submitted to the local government
pursuant to this section. For purposes of this paragraph, “objective
zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances, subject to the following:

(A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

(B) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

(C) The amendments to this subdivision made by the act adding this subparagraph do not constitute a change in, but are declaratory of, existing law.

(D) A project located on a neighborhood lot, as defined in Section 65852.23, shall be deemed consistent with objective zoning standards, objective design standards, and objective subdivision standards if the project meets the standards applied to the parcel pursuant to subdivision (b) of Section 65852.23 and if none of the square footage in the project is designated for hotel, motel, bed and breakfast inn, or other transient lodging use, except for a residential hotel. For purposes of this subdivision, “residential hotel” shall have the same meaning as defined in Section 50519 of the Health and Safety Code.

(6) The development is not located on a site that is any of the following:

(A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.
(B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(C) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

(E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

(F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(G) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official
maps published by the Federal Emergency Management Agency.

If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following are met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(H) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(I) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
(J) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(K) Lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

(A) The development would require the demolition of the following types of housing:

(i) 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.

(ii) Housing that is subject to any form of rent or price control through a public entity’s valid exercise of its police power.

(iii) Housing that has been occupied by tenants within the past 10 years.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

(8) The development proponent has done both of the following, as applicable:

(A) Certified to the locality that either of the following is true, as applicable:

(i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(ii) If the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per
diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, 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. If the development is subject to this subparagraph, then for those portions of the development that are not a public work all of the following shall apply:

(I) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(II) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, 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.

(III) Except as provided in subclause (V), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.

(IV) Except as provided in subclause (V), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(V) Subclauses (III) and (IV) shall 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. For purposes of this clause, “project labor agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

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

(B) (i) For developments for which any of the following conditions apply shall be used to complete the development if the application is approved:

(I) On and after January 1, 2018, until December 31, 2021, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(II) On and after January 1, 2022, until December 31, 2025, the development consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction located in a coastal or bay county with a population of 225,000 or more.

(III) On and after January 1, 2018, until December 31, 2019, the development consists of 75 or more units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(IV) On and after January 1, 2020, until December 31, 2021, the development consists of more than 50 units with a residential component that is not 100 percent subsidized affordable housing and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(V) On and after January 1, 2022, until December 31, 2025, the development consists of more than 25 units with a residential component that is not 100 percent subsidized affordable housing.
and will be located within a jurisdiction with a population of fewer than 550,000 and that is not located in a coastal or bay county.

(ii) For purposes of this section, “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.

(iii) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:

(I) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.

(II) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.

(III) Except as provided in subclause (IV), the applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars ($10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars ($200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.
(IV) Subclause (III) shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, “project labor agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(C) Notwithstanding subparagraphs (A) and (B), a development that is subject to approval pursuant to this section is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:

(i) The project includes 10 or fewer units.

(ii) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:

(A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to paragraph (A) of paragraph (8).

(B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

(10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).
(b) (1) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards specified in subdivision (a), it shall 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, as follows:

(A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.

(B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the local government fails to provide the required documentation pursuant to paragraph (1), the development shall be deemed to satisfy the objective planning standards specified in subdivision (a).

(3) For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

(c) (1) Any design review or public oversight 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 appropriate. That design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application, and shall be broadly applicable to development within the jurisdiction. That design review or public oversight shall be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval provided by this section or its effect, as applicable:

(A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.
Within 180 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

(2) If the development is consistent with the requirements of subparagraph (A) or (B) of paragraph (9) of subdivision (a) and is consistent with all objective subdivision standards in the local subdivision ordinance, an application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and shall be subject to the public oversight timelines set forth in paragraph (1).

(d) (1) Notwithstanding any other law, a local government, whether or not it has adopted an ordinance governing automobile parking requirements in multifamily developments, shall not impose automobile parking standards for a streamlined development that was approved pursuant to this section in any of the following instances:

(A) The development is located within one-half mile of public transit.

(B) The development is located within an architecturally and historically significant historic district.

(C) When on-street parking permits are required but not offered to the occupants of the development.

(D) When there is a car share vehicle located within one block of the development.

(2) If the development does not fall within any of the categories described in paragraph (1), the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(e) (1) If a local government approves a development pursuant to this section, then, notwithstanding any other law, that approval shall not expire if the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the area median income.

(2) (A) If a local government approves a development pursuant to this section and the project does not include 50 percent of the units affordable to households making at or below 80 percent of
the area median income, that approval shall remain valid for three
years from the date of the final action establishing that approval,
or if litigation is filed challenging that approval, from the date of
the final judgment upholding that approval. Approval shall remain
valid for a project provided that vertical construction of the
development has begun and is in progress. For purposes of this
subdivision, “in progress” means one of the following:
(i) The construction has begun and has not ceased for more than
180 days.
(ii) If the development requires multiple building permits, an
initial phase has been completed, and the project proponent has
applied for and is diligently pursuing a building permit for a
subsequent phase, provided that once it has been issued, the
building permit for the subsequent phase does not lapse.
(B) Notwithstanding subparagraph (A), a local government may
grant a project a one-time, one-year extension if the project
proponent can provide documentation that there has been
significant progress toward getting the development construction
ready, such as filing a building permit application.
(3) If a local government approves a development pursuant to
this section, that approval shall remain valid for three years from
the date of the final action establishing that approval and shall
remain valid thereafter for a project so long as vertical construction
of the development has begun and is in progress. Additionally, the
development proponent may request, and the local government
shall have discretion to grant, an additional one-year extension to
the original three-year period. The local government’s action and
discretion in determining whether to grant the foregoing extension
shall be limited to considerations and processes set forth in this
section.
(f) (1) A local government shall not adopt or impose any
requirement, including, but not limited to, increased fees or
inclusionary housing requirements, that applies to a project solely
or partially on the basis that the project is eligible to receive
ministerial or streamlined approval pursuant to this section.
(2) A local government shall issue a subsequent permit required
for a development approved under this section if the application
substantially complies with the development as it was approved
pursuant to subdivision (b). Upon receipt of an application for a
subsequent permit, the local government shall process the permit
without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved pursuant to this section. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this paragraph, a “subsequent permit” means a permit required subsequent to receiving approval under subdivision (b), and includes, but is not limited to, demolition, grading, and building permits and final maps, if necessary.

(g) (1) This section shall not affect a development proponent’s ability to use any alternative streamlined by right permit processing adopted by a local government, including the provisions of subdivision (i) of Section 65583.2.

(2) This section shall not prevent a development from also qualifying as a housing development project entitled to the protections of Section 65589.5. This paragraph does not constitute a change in, but is declaratory of, existing law.

(h) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to:

(1) Lease, convey, or encumber land owned by the local government or the San Francisco Bay Area Rapid Transit District or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible TOD project, as defined pursuant to Section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease, or to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) Approve improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.
(i) For purposes of this section, the following terms have the following meanings:

1. “Affordable housing cost” has the same meaning as set forth in Section 50052.5 of the Health and Safety Code.
2. “Affordable rent” has the same meaning as set forth in Section 50053 of the Health and Safety Code.
3. “Department” means the Department of Housing and Community Development.
4. “Development proponent” means the developer who submits an application for streamlined approval pursuant to this section.
5. “Completed entitlements” means a housing development that has received all the required land use approvals or entitlements necessary for the issuance of a building permit.
6. “Locality” or “local government” means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.
7. “Moderate income housing units” means housing units with an affordable housing cost or affordable rent for persons and families of moderate income, as that term is defined in Section 50093 of the Health and Safety Code.
8. “Production report” means the information reported pursuant to subparagraph (H) of paragraph (2) of subdivision (a) of Section 65400.
9. “State agency” includes every state office, officer, department, division, bureau, board, and commission, but does not include the California State University or the University of California.
10. “Subsidized” means units that are price or rent restricted such that the units are affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code.
11. “Reporting period” means either of the following:
   A. The first half of the regional housing needs assessment cycle.
   B. The last half of the regional housing needs assessment cycle.
12. “Urban uses” means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.
13. The department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that
supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) The determination of whether an application for a development is subject to the streamlined ministerial approval process provided by subdivision (b) is not a “project” as defined in Section 21065 of the Public Resources Code.

(l) It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply.

(m) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy 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.
Item B-13
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: July 10, 2020
SUBJECT: SB 1410 (Caballero) - COVID-19 Emergency: Tenancies
ATTACHMENTS: 1. Summary Memo – SB 1410
2. Bill Text – SB 1410

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

SB 1410 (Caballero) - COVID-19 Emergency: Tenancies (SB 1410) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwi Schmelzer & Lange, provided a summary memo for SB 1410 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 1410, the Liaisons may recommend the following actions:

1) Support SB 1410;
2) Support if amended SB 1410;
3) Oppose SB 1410;
4) Oppose unless amended SB 1410;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 1410, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
July 2, 2020

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 1410 (Caballero) COVID-19 emergency: tenancies.

Introduction Version
As introduced on February 21, 2020, this measure was authored by Senator Lena Gonzalez and included provisions regarding local land use and a new process to appeal those decisions.

June Amendments Add New Author and New Provisions
The June 19, 2020, version of SB 1410 remove Senator Lena Gonzalez from the author line of the bill and designate Senators Anna Caballero and Steve Bradford as joint authors, the June 19 amendments also delete the prior contents and inserts new provisions that establish a new state program that would create a tenant-owner COVID-19 eviction relief agreement, restrict rental property owners from evicting tenants for unpaid rent accrued during the state of emergency, and allow a tax credit to owners that defer rent for tenants in connection with the COVID-19 pandemic. The bill would sunset on January 1, 2035. Specifically, SB 1410 (Caballero) would:

- Allow landlords to agree, through a voluntary COVID-19 eviction relief agreement, to do all of the following, unless the notice alleges that the tenant destroyed property or engaged in behavior that creates a significant threat to public health or safety:
  - Defer a specified amount of rent due during the COVID-19 pandemic and unspecified period thereafter from a tenant;
  - Not serve the tenant with a notice terminating tenancy;
  - Not file a complaint for unlawful detainer;
  - Not take action to proceed with a pending unlawful detainer suit; or
  - Not request that a sheriff execute a writ of possession.

- Require a tenant who signs an agreement to repay all or a portion of the deferred rent amount to the state of California depending on their income with their tax return beginning in the 2024 taxable year.

- Require, in order for the agreement to be valid, that there be an agreement between each property owner and each tenant for all units where rent is being deferred.

- Require the owner to obtain a signed acknowledgement if the tenant rejects the agreement. If the tenant does not respond within 30 (hand-delivered) or 40 (mailed with...
receipt acknowledged) days, the agreement is deemed rejected. The property owner must prepare a sworn confirmation of a rejected offer for their records.

- Require the tenant-owner COVID-19 eviction relief agreement to include a notice with specified contents, plus the following contents:
  - The owner of the real property;
  - A commitment from the owner not to serve a notice terminating the tenancy of the tenant for the length of time included in the agreement;
  - The amount of rent deferred;
  - A commitment from the tenant to repay any unpaid deferred rent to the state; and other details including: name and social security number of owner and tenant, the address of the real property, and the period of time included in the agreement.

- Void any demand for unpaid rent or eviction accrued during the state of emergency and an unspecified period thereafter unless the tenant does not enter into an agreement or threatens public health or safety.

- Enact a personal income and corporation tax credit equal to the amount of unpaid rent specified in the tenant-owner COVID-19 eviction relief agreement that can be claimed commencing in the 2024 and ending in the 2034 taxable year.

- Enhance the value of the credit if the qualified taxpayer is also a small business, by an adjustment for inflation of no less than two percent, and defines “small business owner” as a qualified taxpayer that is an individual that is the sole owner (or owners in the case of those individuals that are married and filing a joint return) of the property and whose state adjusted gross income is not more than $1,000,000 for the taxable year in which the tenant-owner COVID-19 eviction relief agreement was executed.

- Require the owner to register with the Franchise Tax Board (FTB) after executing a tenant-owner COVID-19 eviction relief agreement to be eligible for the measure’s tax credit. However, any agreement between related persons as defined in the Internal Revenue Code does not qualify for a tax credit. The owner must also provide a copy of the tenant-owner COVID-19 eviction relief agreement to FTB within a specified time after executing the agreement.

- Require any real property owner who receives a credit under the provisions of this bill, but violates the terms of the tenant-owner COVID-19 eviction relief agreement, to repay the entire credit to FTB immediately, plus interest, from the date the credit was first claimed on the return.

- Allow the qualified taxpayer to claim the credit for any taxable year between 2024 and 2034, of the qualified taxpayers choosing, the credit to be refunded upon an appropriation of the Legislature, and the sale of the credit to an unrelated party, or carried over indefinitely until exhausted, with certain limitations.

- Require tenants to pay back the deferred rent to the state by including a payment with their tax return beginning in 2024, subject to the following conditions:
  - Specifies that no interest shall be charged on the balance of the deferred rent, unless the balance is sent to collections.
The total deferred rent must be divided into equal installments and included with the tenant’s tax return over a 10-year period beginning in the 2024 taxable year and, ending in the 2034 taxable year, unless the taxpayer seeks an exemption or reduction for the installment amount for that year.

- Allows a tenant repaying deferred rent to apply for a reduction or elimination of that year’s installment based on a comparison their taxable income to the state median income.
- Directs FTB to collect any unpaid amounts in a manner similar to other tax debts, including recording liens and issuing levies. Any repaid amounts are deposited in the General Fund.

- Exempt for tax purposes any amount of unpaid rent deferred in a signed and executed COVID-19 eviction relief agreement.

**Discussion**
Governor Gavin Newsom has issued and extended various executive orders that prohibit landlords from evicting tenants for nonpayment of rent. These orders also prohibit enforcement of evictions by law enforcement or courts. Additionally, the California Judicial Council adopted an emergency rule that provides that unless necessary to protect public health and safety, an eviction case cannot proceed either while the Governor’s state of emergency remains effective or for 90 days after it ends—even if the eviction is not COVID-19 related. Tenants must still pay rent, but cannot be evicted during this period.

The author argues that the current tenant protections from eviction found in the Governor's Executive Orders and the Judicial Council Rule will eventually expire, which could result in residential rental property owners evicting renters for non-payment of rent, potentially in large numbers. In response, SB 1410 (Caballero) would create incentives for rental property owners to defer rent for tenants in exchange for a tax credit that could be claimed commencing in taxable year 2024.

The California Rental Housing Association argues that, as drafted, “we anticipate that almost any renter, regardless of ability to pay rent now, would force a housing provider to accept an agreement. The result will be a lack of income to rental housing providers, potentially increasing the likelihood of future foreclosures and a reduction in the rental housing stock because of rental housing providers choosing to leave the rental housing industry.”

**Status of Legislation**
This bill is set to be heard in the Assembly Judiciary Committee on July 22.

**Support**
None

**Opposition**
California Association of Realtors
California Rental Housing Association
Attachment 2
SENATE BILL No. 1410

Introduced by Senators Caballero and Bradford
(Principal coauthors: Senators Atkins and Hertzberg)

February 21, 2020

An act to add and repeal Section 1947.20 of the Civil Code, to add and repeal Section 1161.05 of the Code of Civil Procedure, and to add and repeal Sections 17053.10, 17154.5, 19534, 23610, and 24311 of the Revenue and Taxation Code, relating to tenancy, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

SB 1410, as amended, Caballero. COVID-19 emergency: tenancies. 
(1) Existing law permits the Governor to proclaim a state of emergency during conditions of disaster or of extreme peril to the safety of persons and property, including epidemics. Existing law provides that the proclamation takes effect immediately, affords specified powers to the Governor, and terminates upon further proclamation by the Governor. The Governor proclaimed a state of emergency March 4, 2020, related to the COVID-19 pandemic. An executive order issued by the Governor on March 27, 2020, and extended on May 29, 2020, prohibits the eviction of residential tenants during the pendency of a
state of emergency, except as specified. Under the executive order, this protection is effective through July 28, 2020.

Existing law establishes a procedure, known as an unlawful detainer action, that a landlord must follow in order to evict a tenant. Existing law provides that a tenant is subject to such an action if the tenant continues to possess the property without permission of the landlord in specified circumstances, including when the tenant has violated the lease by defaulting on rent or failing to perform a duty under the lease.

Existing law, the Tenant Protection Act of 2019, prohibits, with certain exceptions, an owner of residential real property from increasing the gross rental rate for a dwelling or unit more than 5% plus the percentage change in the cost of living, as defined, or 10%, whichever is lower, of the lowest gross rental rate charged for the immediately preceding 12 months, subject to specified conditions.

This bill would authorize an owner of real property and a tenant to sign and execute a tenant-owner rent stabilization COVID-19 eviction relief agreement that, during a state of emergency related to the COVID-19 pandemic, and unspecified additional days, would allow the tenant to defer the tenant’s unpaid rent, and would prohibit the owner from serving a notice terminating the tenancy or filing a complaint for unlawful detainer for that unpaid rent or during the state of emergency, unless an exception applies. The agreement would require the tenant to repay the unpaid rent to the state as installments in accordance with a specified repayment schedule during taxable years beginning on or after January 1, 2024, and before January 1, 2034. The bill would require the owner of real property to offer the tenant a signed copy of the agreement, along with a specified notice, prior to executing the tenant-owner rent stabilization COVID-19 eviction relief agreement. The bill would require the owner of real property to obtain a signed acknowledgment of receipt from the tenant if the tenant declines the offer. If the tenant does not respond to the offer, the bill would require the owner to confirm, under penalty of perjury, that the owner hand-delivered or mailed the offer. By expanding the crime of perjury, the bill would impose a state-mandated local program.

This bill would void any demand for the payment of unpaid rent accrued, or any notice to terminate tenancy served, beginning on March 4, 2020, upon the declaration of the state of emergency related to the COVID-19 pandemic, and until the state of emergency is terminated, as provided. The bill would, during the state of emergency, prohibit an owner of real property from demanding payment of unpaid rent, serving
a notice terminating tenancy, or filing a complaint for unlawful detainer, among other things, unless the owner includes a signed acknowledgment of receipt or a sworn confirmation of a rejected offer for a tenant-owner rent stabilization COVID-19 eviction relief agreement.

(2) Existing law authorizes the Franchise Tax Board to require any person to withhold for income tax purposes an amount of a taxpayer’s income, as specified, that reasonably represents the amount of tax due, as determined by the board. Existing law also provides for the collection of various debts by the Franchise Tax Board, including fines, state or local penalties, bail, forfeitures, restitution fines, restitution orders, and other amounts imposed by specified state courts and delinquent tax debt due to the federal Internal Revenue Service.

This bill would require the Franchise Tax Board to calculate the repayment installments of unpaid rent, and would authorize a tenant to apply for reduction or forgiveness of repayment installments depending on the taxpayer’s income. The bill would require specified persons to withhold the amount of each installment from each tenant’s income during taxable years beginning on or after January 1, 2024, and before January 1, 2034, as provided. The bill would require the Franchise Tax Board to transfer these moneys to the Treasurer to be deposited in the General Fund.

This bill would specify that any deferment or repayment of rent authorized under these provisions is not included when determining the lowest gross rental rate for purposes of the Tenant Protection Act of 2019.

(3) Existing law, the Personal Income Tax Law, and the Corporation Tax Law, impose taxes upon taxable income, and in conformity with federal income tax law, generally defines “gross income” for purposes of those laws as income from whatever source derived, except as specifically excluded, and provides various exclusions from gross income. Existing law authorizes various credits against the taxes imposed by those laws.

Existing law establishes the continuously appropriated Tax Relief and Refund Account in the General Fund and provides that payments required to be made to taxpayers or other persons from the Personal Income Tax Fund are to be paid from that account, including any amount allowable as an earned income tax credit in excess of any tax liabilities.

This bill, for taxable years beginning on or after January 1, 2024, and before January 1, 2034, would exclude from gross income the gross amount of unpaid rent in a signed and executed tenant-owner rent
This bill would allow a credit against those taxes for each taxable year beginning on or after January 1, 2024, and before January 1, 2034, to a qualified taxpayer who is an owner of real property, as specified, in an amount equal to the gross amount of unpaid rent deferred by the qualified taxpayer in a signed and executed tenant-owner—rent stabilization COVID-19 eviction relief agreement between the qualified taxpayer and a tenant that meets the requirements described above, or in an amount equal to the gross amount of unpaid rent deferred plus inflation of at least 2% if the qualified taxpayer is a small business owner. The bill would require the qualified taxpayer to register with the Franchise Tax Board, and would require the board to approve the reservation, as specified. The bill would authorize the qualified taxpayer to claim the credit in any taxable year beginning on or after January 1, 2024, and before January 1, 2034, of the qualified taxpayer’s choosing, or to sell the credit to an unrelated party, subject to specified conditions. If the amount allowable as a credit exceeds the qualified taxpayer’s tax liability for the taxable year, the bill would authorize the qualified taxpayer to choose whether to be refunded the balance from the Tax Relief and Refund Account upon appropriation by the Legislature or to carry over the balance to reduce the taxpayer’s tax liability in the following taxable years, as provided. By authorizing additional moneys to be paid from a continuously appropriated fund, the bill would make an appropriation.

(4) 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.

(5) This bill would declare that it is to take effect immediately as an urgency statute.


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

1 SECTION 1. Section 1947.20 is added to the Civil Code, to read:
1947.20. (a) (1) An owner of real property and a tenant may sign and execute a tenant-owner rent stabilization COVID-19 eviction relief agreement during the state of emergency, and ____ days thereafter, in compliance with this section.

(2) If there is more than one owner of real property, each owner must sign the tenant-owner rent stabilization COVID-19 eviction relief agreement.

(3) If there is more than one tenant on one lease agreement for the real property unit, each tenant must have a separate tenant-owner rent stabilization COVID-19 eviction relief agreement with the owner of real property.

(4) If there is more than one tenant for the real property unit and each tenant has a separate lease agreement, each tenant must also have a separate tenant-owner rent stabilization COVID-19 eviction relief agreement with the owner of real property.

(b) The terms of the tenant-owner rent stabilization COVID-19 eviction relief agreement shall include all of the following:

(1) The owner of real property shall agree to allow the tenant to defer, pursuant to this section, any unpaid rents accrued during the state of emergency, and ____ days thereafter, and shall specify the amount of unpaid rent that will be deferred.

(2) The owner of real property shall agree not to serve a notice terminating the tenancy, file a complaint for unlawful detainer, take action to proceed with a pending unlawful detainer suit, or request that a sheriff execute a writ of possession for the property for either of the following:

(A) The unpaid rent that will be deferred.

(B) During the state of emergency, and ____ days thereafter, unless the notice alleges that the tenant has destroyed property or engaged in behavior that creates a substantial threat to the public health or safety.

(3) The tenant shall agree to pay any deferred unpaid rent accrued during the state of emergency, and ____ days thereafter, to the state in accordance with Section 19534 of the Revenue and Taxation Code.

(c) (1) Before an owner of real property and a tenant execute a tenant-owner rent stabilization COVID-19 eviction relief agreement, the owner of real property shall offer the tenant a signed copy of the agreement with the following notice:
NOTICE: BEFORE YOU ENTER INTO A COVID-19 PANDEMIC

California state law requires that you get this important notice before you decide whether to sign an agreement with your landlord to address your unpaid rent during the COVID-19 pandemic.

If you sign this agreement, your landlord agrees not to evict you for the unpaid rent specified in this agreement, and agrees not to evict you during a state of emergency relating to COVID-19, unless your lease expires or you do something to destroy property or that threatens public health and safety.

The State of California will pay your unpaid rent to your landlord in the form of a tax credit.

You will be required to repay the State of California the amount of unpaid rent listed in this agreement, in annual equal installment payments over the span of ten years beginning in 2024. The State of California will not charge you interest for this amount owed as long as the payment is made timely. If you cannot make your installment payments beginning in 2024, you may be eligible for a reduction or cancellation of that payment at that time. For more information, visit the Franchise Tax Board’s web page at

IMPORTANT THINGS YOU SHOULD KNOW

If you sign this agreement with your landlord, the agreement only protects you against an eviction from your current residence during a declared state of emergency relating to COVID-19 and for _____ days thereafter. In other words, when the COVID-19 state of emergency is over, you will be fully responsible for paying your rent and complying with the terms of your lease. If you sign this agreement, you should keep a copy of it for your records.

Pursuant to Section 1947.20 of the California Civil Code, ____ (Name of Owner of Real Property) ____ agrees to defer the rent of ____ (Name of Tenant/Lessee) ____ for the property located at ____ (Property Address) ____ in the amount of $____ (Unpaid rent accrued) ____, covering the time period from ______ to ______.

____ (Name of Tenant/Lessee) ____ agrees to repay the amount of $____ (Same amount as unpaid rent accrued) ____ to the State of California, starting in 2024, over a span of ten annual installments, interest-free.

IF YOU WANT THIS AGREEMENT, SIGN HERE, NEXT TO YOUR LANDLORD:

____ (Date) ____ ____ (Date) ____
ACKNOWLEDGMENT OF RECEIPT OF OFFER TO SIGN RENT STABILIZATION COVID-19 EVICTION RELIEF AGREEMENT

I, ____(Name of Tenant/Lessee)____ acknowledge that, on ____(Date of Receipt)____, my landlord ____(Name of Owner of Real Property)____ offered me to sign a Rent Stabilization COVID-19 Eviction Relief Agreement for ____(Property Address)____ for unpaid rent during ____(Month(s) & Year)____.

I have read the Rent Stabilization COVID-19 Eviction Relief Agreement and I DO NOT want to sign the Rent Stabilization COVID-19 Eviction Relief Agreement.

I understand that if I DO NOT sign the Rent Stabilization COVID-19 Eviction Relief Agreement, I am still obligated to pay for any unpaid rent past due according to my lease. Accordingly, my landlord may seek a court order for my eviction.

____(Date)____ ____(Date)____

IMPORTANT THINGS YOU SHOULD KNOW

If you DO NOT sign the Rent Stabilization COVID-19 Eviction Relief Agreement or DO NOT RESPOND to this Acknowledgment of Receipt within 30 days of receiving it, your landlord will assume that you have REJECTED the Rent Stabilization COVID-19 Eviction Relief Agreement.

(2) If the owner of real property customarily communicates with the tenant in Spanish, Chinese, Tagalog, Vietnamese, or Korean, the owner of real property shall provide the tenant a copy of the notice and agreement in that language. The owner of real property may use the notice and agreement created by the Franchise Tax Board.

(3) (A) If an owner of real property makes an offer to the tenant to execute the tenant-owner rent stabilization COVID-19 eviction relief agreement and the tenant rejects the offer, the owner shall obtain a signed acknowledgment of receipt from the tenant.
(B) (i) If the tenant does not respond to the offer or to the acknowledgment of receipt within 30 days of the owner hand-delivering the offer, or within 40 days of the owner mailing the offer and acknowledgment of receipt, the offer shall be deemed rejected.

(ii) If the offer is deemed rejected, the owner of real property shall prepare the following sworn confirmation of a rejected offer for their records:

**SWORN CONFIRMATION OF A TENANT-OWNER REJECTED OFFER OF RENT STABILIZATION COVID-19 EVICTION RELIEF AGREEMENT**

I swear under penalty of perjury under the laws of the State of California that, on ____ (Date that the Notice and Offer were delivered or mailed), I hand-delivered or mailed a signed Rent Stabilization COVID-19 EVICTION RELIEF Agreement to ____ (Name of Tenant/Lessee) at ____ (Address of Rental property) and that 30 days have since past if I hand-delivered the offer, or 40 days have since past if I mailed the offer.

(Name)___________________
Signature Date

(d) (1) Upon registering with the Franchise Tax Board, an owner of real property who executes a signed tenant-owner rent stabilization COVID-19 eviction relief agreement with a tenant pursuant to this section shall be eligible for a credit against their tax liability pursuant to Sections 17053.10 and 23610 of the Revenue and Taxation Code, unless the tenant-owner rent stabilization COVID-19 eviction relief agreement is between related persons as defined in Section 267 of Title 26 of the United States Code.

(2) An owner of real property who receives a credit against their tax liability pursuant to Section 17053.10 and 23610 of the Revenue and Taxation Code and who violates the tenant-owner rent stabilization COVID-19 eviction relief agreement shall be required to repay the entire credit to the Franchise Tax Board immediately, plus interest from the date the credit was first claimed on the tax return, as determined by the Franchise Tax Board.

(e) The owner of real property shall provide the Franchise Tax Board a copy of the tenant-owner rent stabilization COVID-19 eviction relief agreement and a copy of the signed receipt of acknowledgment from the tenant, consistent with this section, in
a form and manner specified by the Franchise Tax Board, by the
following dates:
(1) For agreements executed on or before January 1, 2021, no
later than January 1, 2021.
(2) For agreements executed on or after January 1, 2021, no
later than 60 days after the date the agreement is signed by both
the owner and the tenant.
(f) The owner of real property shall provide a copy of the
tenant-owner rent stabilization COVID-19 eviction relief agreement
to the tenant within five days from when the agreement is executed.
(g) No deferment or repayment of rent authorized under this
section shall be included when determining the lowest gross rental
rate pursuant to Section 1947.12.
(h) For purposes of this section, the following shall apply:
(1) “Owner of real property” means an owner of residential real
property or an owner of a mobilehome park.
(2) “Rent” does not include rental assistance payments from
any federal or state governmental source or a nonprofit organization
received by the tenant or by the owner of real property on the
tenant’s behalf.
(3) “State of emergency” means an emergency related to the
COVID-19 pandemic declared by the Governor pursuant to the
California Emergency Services Act (Chapter 7 (commencing with
Section 8550) of Division 1 of Title 2 of the Government Code).
(i) This section shall remain in effect only until December 31,
2034, and as of that date is repealed.
SEC. 2. Section 1161.05 is added to the Code of Civil
Procedure, to read:
1161.05. (a) (1) Except as authorized under subdivision (b),
any demand for payment of unpaid rent accrued during a state of
emergency, and _____ days thereafter, and any notice terminating
tenancy, including, but not limited to, any notice pursuant to
Section 1161 or Section 798.56 of the Civil Code, is void if it was
served during the state of emergency, and _____ days thereafter,
and the conduct that gave rise to the demand or notice occurred
during the state of emergency, and _____ days thereafter.
(2) It is the intent of the Legislature that this subdivision shall
apply retroactively. In any action for unlawful detainer in which
a judgment for possession has been entered in favor of the owner
of real property, the tenant may move to have that judgment set
aside on the basis of this subdivision. No writ of possession shall
issue while the motion to set aside is pending. If a writ of
possession was issued prior to filing of the motion to set aside, the
court shall stay execution of the writ while the motion to set aside
the judgment is pending.
(b) (1) An owner of real property shall not, during a state of
emergency, and _____ days thereafter, demand payment of unpaid
rent, serve a notice terminating tenancy, file a complaint for
unlawful detainer, take action to proceed with a pending unlawful
detainer action, request that a sheriff execute a writ of possession
for the property, or otherwise attempt to evict a tenant in any
manner unless either of the following applies:
(A) The notice and any complaint based on that notice allege
that the action is necessary to protect public health and safety.
(B) The notice or complaint includes either a signed
acknowledgment of receipt or a sworn confirmation of a rejected
offer pursuant to subdivision (c) of Section 1947.20.
(2) It is the intent of the Legislature that this subdivision apply
prospectively.
(c) For purposes of this section, “state of emergency” means an
emergency related to the COVID-19 pandemic declared by the
Governor pursuant to the California Emergency Services Act
(Chapter 7 (commencing with Section 8550) of Division 1 of Title
(d) This section shall remain in effect two years after the state
of emergency related to the COVID-19 pandemic terminates, and
as of that date is repealed.
SEC. 3. Section 17053.10 is added to the Revenue and Taxation
Code, to read:
17053.10. (a) (1) For each taxable year beginning on or after
January 1, 2024, and before January 1, 2034, there shall be allowed
as a credit to a qualified taxpayer against the “net tax,” as defined
in Section 17039, an amount equal to the amount of qualified rent
defered by the qualified taxpayer.
(2) If the qualified taxpayer is also a small business owner, the
credit shall be an amount equal to the amount of qualified rent
defered by the qualified taxpayer, plus an adjustment for inflation
no less than 2 percent.
(b) For purposes of this section:
(1) “Qualified rent” means an amount equal to the gross amount of unpaid rent deferred by the qualified taxpayer in a signed and executed tenant-owner rent stabilization COVID-19 eviction relief agreement between the qualified taxpayer and the tenant that meets the requirements of Section 1947.20 of the Civil Code. Qualified rent does not include any amounts in excess of 100 percent of the sum of the amounts of rent charged per month stated in the lease agreement that would have been paid but for the executed tenant-owner rent stabilization COVID-19 eviction relief agreement for those months in which the tenant-owner rent stabilization COVID-19 eviction relief agreement applies.

(2) (A) “Qualified taxpayer” means an owner of real property, as defined in Section 1947.20 of the Civil Code, that is subject to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code, and has registered with the Franchise Tax Board as provided in subdivision (d) of this section and been allowed a credit.

(B) In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section is not allowed to the pass-thru entity, but shall be passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, “pass-thru entity” means any entity taxed as a partnership or “S” corporation.

(3) “Small business owner” means an individual that meets both of the following:

(A) Is the sole owner, or owners in the case of those individuals that are married and filing a joint return for the property.

(B) Whose state Adjusted Gross Income is no more than $1,000,000 for the taxable year in which the tenant-owner rent stabilization COVID-19 eviction relief agreement was executed.

(c) (1) On or before January 1, 2021, the Franchise Tax Board shall create a registration program for qualified taxpayers.

(2) The registration form shall require the qualified taxpayer to provide necessary information, as determined by the Franchise Tax Board, including, but not limited to, the following items:

(A) Name under which the qualified taxpayer transacts or intends to transact business.
(B) Name, address, and social security number or tax
identification number of the tenant or tenants.
(C) Start date of the rent deferral, and the amount of rent
defered.
(D) The location of the qualified taxpayer’s place or places of
businesses.
(E) A copy or copies of the executed tenant-owner rent
stabilization COVID-19 eviction relief agreements pursuant to
Section 1947.20 of the Civil Code.
(F) A copy or copies of the existing lease agreements between
the qualified taxpayer and the tenant or tenants.
   (d) (1) To be eligible for the credit authorized by this section,
each qualified taxpayer shall register with the Franchise Tax Board
within ____ days of executing a tenant-owner rent stabilization
COVID-19 eviction relief agreement, and shall provide the
information required in paragraph (2) of subdivision (c).
   (2) Upon receipt of a registration form, the Franchise Tax Board
shall approve the reservation with respect to a qualified taxpayer,
and shall provide a notice to the taxpayer that includes the amount
of credit that would be available if the terms of the tenant-owner
rent stabilization COVID-19 eviction relief agreement are
completed.
   (e) Beginning January 1, 2022, and annually thereafter, the
Franchise Tax Board shall determine the aggregate amount of
credit that has been approved for each calendar year.
   (f) Any credit or deduction otherwise allowed under this part
for any amount paid or incurred by the taxpayer upon which this
credit is based shall be reduced by the amount of the credit allowed
under this section.
   (g) (1) A qualified taxpayer may claim the credit authorized in
this section in any taxable year beginning on or after January 1,
2024, and before January 1, 2034, of the qualified taxpayer’s
choosing.
   (2) If the amount allowable as a credit under this section exceeds
the tax liability computed under this part for the taxable year, the
excess shall be credited against other amounts due, if any, and the
balance, if any, at the qualified taxpayer’s choosing, shall either:
   (A) Be paid from the Tax Relief and Refund Account and
refunded to the qualified taxpayer upon appropriation
by the Legislature.
(B) Be carried over to reduce the “net tax” in the following taxable year, and succeeding years if necessary, until the credit is exhausted.

(h) (1) Notwithstanding any other law, except as set forth in this subdivision, a qualified taxpayer may sell any credit allowed under this section to an unrelated party.

(2) The qualified taxpayer shall report to the Franchise Tax Board prior to the sale of the credit, in the form and manner specified by the Franchise Tax Board, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the qualified taxpayer for the sale of the credit.

(3) In the case where the credit allowed under this section exceeds the “net tax,” the excess credit may be carried over to reduce the “net tax” of the party to whom the credit has been sold in the following taxable year, and succeeding years if necessary, until the credit is exhausted.

(4) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor shall the credit be resold by the unrelated party to another taxpayer or other party.

(5) A party that has acquired tax credits under this section shall be subject to the requirements of this section.

(6) In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed by this section is claimed on any tax return of the qualified taxpayer.

(i) The Franchise Tax Board shall develop a tax form to be used by the qualified taxpayer to verify the amount of qualified rent deferred pursuant to an executed tenant-owner COVID-19 eviction relief agreement pursuant to Section 1947.20 of the Civil Code.

(j) (1) The Franchise Tax Board may prescribe rules, guidelines, or procedures to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this section.
(2) (A) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this section, including any regulations to prevent improper claims from being filed or improper payments from being made with respect to net earnings from self-employment.

(B) The adoption of any regulations pursuant to subparagraph (A) may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) and shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law. The regulations shall become effective immediately upon filing with the Secretary of State, and shall remain in effect until revised or repealed by the Franchise Tax Board.

(k) This section shall remain in effect only until December 1, 2034, and as of that date is repealed.

SEC. 4. Section 17154.5 is added to the Revenue and Taxation Code, to read:

17154.5. (a) For taxable years beginning on and after January 1, 2024, gross income does not include the gross amount of unpaid rent in a signed and executed tenant-owner rent stabilization COVID-19 eviction relief agreement that is reduced or forgiven by the Franchise Tax Board pursuant to Section 19534.

(b) This section shall remain in effect only until December 31, 2034, and as of that date is repealed.

SEC. 5. Section 19534 is added to the Revenue and Taxation Code, to read:

19534. (a) The Franchise Tax Board shall create a form tenant-owner rent stabilization COVID-19 eviction relief agreement and accompanying notice, as described in Section 1947.20 of the Civil Code, in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean, and shall make the form agreement and notice available on its website within 30 days of the operative date of this section. The Franchise Tax Board may call upon the assistance of
any other state agency or public entity for assistance in carrying out these translations.

(b) For taxable years beginning on and after January 1, 2024, and before January 1, 2034, a tenant in a tenant-owner-rent stabilization COVID-19 eviction relief agreement, as specified in Section 1947.20 of the Civil Code, shall pay the deferred rent in accordance with the following:

(1) The Franchise Tax Board shall not impose interest on the balance of unpaid rent specified in a tenant-owner-rent stabilization COVID-19 eviction relief agreement unless and until the balance must sent to collections.

(2) The unpaid rent shall be divided into equal installments over a 10-year period beginning in each taxable year on and after January 1, 2024, and before January 1, 2034, and shall be repaid in those installments, unless a taxpayer seeks an exemption or reduction in the installment amount of that year as specified in paragraph (3).

(3) (A) Each equal installment calculated under paragraph (2) shall be included in the taxpayer’s tax return for each year specified above.

(B) A taxpayer may apply for a reduction or elimination of that year’s installment based on their taxable income for that year with the Franchise Tax Board, in a form and manner as specified by the Franchise Tax Board, as follows:

(i) For individuals with an income equal to or greater than 150 percent of the median state income, 100 percent of the payment calculated under paragraph (2).

(ii) For individuals with an income between 100 and 149 percent, inclusive, of the median state income, 75 percent of the payment calculated under paragraph (2).

(iii) For individuals with an income between 75 and 99 percent, inclusive, of the median state income, 50 percent of the payment calculated under paragraph (2).

(iv) For individuals with less than 75 percent of the median state income, none of the payment calculated under paragraph (2).

(C) Any portion of an equal installment calculated under paragraph (2) that is allowed to be reduced or forgiven shall not be collected by the Franchise Tax Board or any other person. The remaining installment shall remain due until explicitly forgiven or reduced by the Franchise Tax Board.
(c) (1) The Franchise Tax Board shall require any person required to withhold income under Section 18662 to additionally withhold the payments determined by the Franchise Tax Board under subdivision (a) and to transmit the amount withheld to the Franchise Tax Board at the time as it may designate.

(2) For a tenant in which withholding under paragraph (1) does not apply, the repayment of rent subject to a tenant-owner rent stabilization COVID-19 eviction relief agreement under Section 1947.20 of the Civil Code shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent income tax liability, including, but not limited to, the recording of a notice of state tax lien under Article 2 (commencing with Section 7170) of Chapter 14 of Division 7 of Title 1 of the Government Code, and the issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) The Franchise Tax Board shall transfer moneys collected under this section to the Treasurer to be deposited in the General Fund.

(e) For purposes of this section, the following apply:

(1) “Median state income” means the median state income provided by the Department of Finance.

(2) “Tenant” means a tenant who signs and executes a tenant-owner rent stabilization COVID-19 eviction relief agreement with an owner of real property pursuant Section 1947.20 of the Civil Code.

(f) This section shall remain in effect only until December 31, 2034, and as of that date is repealed.

SEC. 6. Section 23610 is added to the Revenue and Taxation Code, to read:

23610. (a) (1) For each taxable year beginning on or after January 1, 2024, and before January 1, 2034, there shall be allowed as a credit to a qualified taxpayer against the “tax,” as defined in Section 23036, an amount equal to the amount of qualified rent deferred by the qualified taxpayer.

(2) If the qualified taxpayer is also a small business owner, the credit shall be an amount equal to the amount of qualified rent
deferred by the qualified taxpayer, plus an adjustment for inflation no less than 2 percent.

(b) For purposes of this section:

(1) “Qualified rent” means an amount equal to the gross amount of unpaid rent deferred by the qualified taxpayer in a signed and executed tenant-owner rent stabilization \textit{COVID-19 eviction relief} agreement between the qualified taxpayer and the tenant that meets the requirements of Section 1947.20 of the Civil Code. Qualified rent does not include any amounts in excess of 100 percent of the sum of the amounts of rent charged per month stated in the lease agreement that would have been paid but for the executed tenant-owner rent stabilization \textit{COVID-19 eviction relief} agreement for those months in which the tenant-owner rent stabilization \textit{COVID-19 eviction relief} agreement applies.

(2) (A) “Qualified taxpayer” means an owner of real property, as defined in Section 1947.20 of the Civil Code, that is subject to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code, and has registered with the Franchise Tax Board as provided in subdivision (d) of this section and been allowed a credit.

(B) In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section is not allowed to the pass-thru entity, but shall be passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, “pass-thru entity” means any entity taxed as a partnership or “S” corporation.

(3) “Small business owner” means an individual that meets both of the following:

(A) Is the sole owner, or owners in the case of those individuals that are married and filing a joint return for the property.

(B) Whose state Adjusted Gross Income is no more than $1,000,000 for the taxable year in which the tenant-owner rent stabilization \textit{COVID-19 eviction relief} agreement was executed.

(c) (1) On or before January 1, 2021, the Franchise Tax Board shall create a registration program for qualified taxpayers.
(2) The registration form shall require the qualified taxpayer to provide necessary information, as determined by the Franchise Tax Board, including, but not limited to, the following items:

(A) Name under which the qualified taxpayer transacts or intends to transact business.

(B) Name, address, and social security number or tax identification number of the tenant or tenants.

(C) Start date of the rent deferral, and the amount of rent deferred.

(D) The location of the qualified taxpayer’s place or places of business.

(E) A copy or copies of the executed tenant-owner rent stabilization COVID-19 eviction relief agreements pursuant to Section 1947.20 of the Civil Code.

(F) A copy or copies of the existing lease agreements between the qualified taxpayer and the tenant or tenants.

(d) (1) To be eligible for the credit authorized by this section, each qualified taxpayer shall register with the Franchise Tax Board within _____ days of executing a tenant-owner rent stabilization COVID-19 eviction relief agreement, and shall provide the information required in paragraph (2) of subdivision (c).

(2) Upon receipt of a registration form, the Franchise Tax Board shall approve the reservation with respect to a qualified taxpayer, and shall provide a notice to the taxpayer that includes the amount of credit that would be available if the terms of the tenant-owner rent stabilization COVID-19 eviction relief agreement are completed.

(e) Beginning January 1, 2022, and annually thereafter, the Franchise Tax Board shall determine the aggregate amount of credit that has been approved for each calendar year.

(f) Any credit or deduction otherwise allowed under this part for any amount paid or incurred by the taxpayer upon which this credit is based shall be reduced by the amount of the credit allowed under this section.

(g) (1) A qualified taxpayer may claim the credit authorized in this section in any taxable year beginning on or after January 1, 2024, and before January 1, 2034, of the qualified taxpayer’s choosing.

(2) If the amount allowable as a credit under this section exceeds the tax liability computed under this part for the taxable year, the
excess shall be credited against other amounts due, if any, and the
balance, if any, at the qualified taxpayer’s choosing, shall either:
(A) Be paid from the Tax Relief and Refund Account and
refunded to the qualified taxpayer upon appropriation
by the Legislature.
(B) Be carried over to reduce the “tax” in the following taxable
year, and succeeding years if necessary, until the credit is
exhausted.
(h) (1) Notwithstanding any other law, except as set forth in
this subdivision, a qualified taxpayer may sell any credit allowed
under this section to an unrelated party.
(2) The qualified taxpayer shall report to the Franchise Tax
Board prior to the sale of the credit, in the form and manner
specified by the Franchise Tax Board, all required information
regarding the purchase and sale of the credit, including the social
security or other taxpayer identification number of the unrelated
party to whom the credit has been sold, the face amount of the
credit sold, and the amount of consideration received by the
qualified taxpayer for the sale of the credit.
(3) In the case where the credit allowed under this section
exceeds the “tax,” the excess credit may be carried over to reduce
the “tax” of the party to whom the credit has been sold in the
following taxable year, and succeeding years if necessary, until
the credit is exhausted.
(4) A credit shall not be sold pursuant to this subdivision to
more than one taxpayer, nor shall the credit be resold by the
unrelated party to another taxpayer or other party.
(5) A party that has acquired tax credits under this section shall
be subject to the requirements of this section.
(6) In no event may a qualified taxpayer assign or sell any tax
credit to the extent the tax credit allowed by this section is claimed
on any tax return of the qualified taxpayer.
(i) The Franchise Tax Board shall develop a tax form to be used
by the qualified taxpayer to verify the amount of qualified rent
defered pursuant to an executed tenant-owner rent stabilization
COVID-19 eviction relief agreement pursuant to Section 1947.20
of the Civil Code.
(j) (1) The Franchise Tax Board may prescribe rules, guidelines,
or procedures to carry out the purposes of this section, including
any guidelines regarding the allocation of the credit allowed under
this section. Chapter 3.5 (commencing with Section 11340) of Part
1 of Division 3 of Title 2 of the Government Code shall not apply
to any rule, guideline, or procedure prescribed by the Franchise
Tax Board pursuant to this section.
(2) (A) The Franchise Tax Board may prescribe any regulations
necessary or appropriate to carry out the purposes of this section,
including any regulations to prevent improper claims from being
filed or improper payments from being made with respect to net
earnings from self-employment.
(B) The adoption of any regulations pursuant to subparagraph
(A) may be adopted as emergency regulations in accordance with
the rulemaking provisions of the Administrative Procedure Act
(Chapter 3.5 (commencing with Section 11340) of Part 1 of
Division 3 of Title 2 of the Government Code) and shall be deemed
an emergency and necessary for the immediate preservation of the
public peace, health and safety, or general welfare. Notwithstanding
Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
3 of Title 2 of the Government Code, these emergency regulations
shall not be subject to the review and approval of the Office of
Administrative Law. The regulations shall become effective
immediately upon filing with the Secretary of State, and shall
remain in effect until revised or repealed by the Franchise Tax
Board.
(k) This section shall remain in effect only until December 1,
2034, and as of that date is repealed.
SEC. 7. Section 24311 is added to the Revenue and Taxation
Code, to read:
24311. (a) For taxable years beginning on and after January
1, 2024, gross income does not include the gross amount of unpaid
rent in a signed and executed tenant-owner rent stabilization
COVID-19 eviction relief agreement that is reduced or forgiven
by the Franchise Tax Board pursuant to Section 19534.
(b) This section shall remain in effect only until December 31,
2034, and as of that date is repealed.
SEC. 8. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
 Constitution.
SEC. 9. This act is an urgency statute necessary for the
immediate preservation of the public peace, health, or safety within
the meaning of Article IV of the California Constitution and shall
go into immediate effect. The facts constituting the necessity are:
In order to assist tenants and owners of real property during the
state of emergency relating to the COVID-19 pandemic as quickly
as possible, it is necessary for this act to take effect immediately.
Item B-14
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cindy Owens, Policy & Management Analyst
DATE: July 10, 2020
SUBJECT: State and Federal Legislative Updates
ATTACHMENTS: None

A verbal update on federal legislative issues will be given by Jamie Jones of David Turch & Associates.

A verbal update on state legislative issues will be given by Andrew Antwih with Shaw/Yoder/Antwih, Inc.