California State Assembly

HOUSING AND COMMUNITY DEVELOPMENT

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CHRISTOPHER M WARD
CHAIR

AGENDA

Wednesday, April 10, 2024
9 a.m. -- State Capitol, **Room 437**
(Please note room change)

SPECIAL ORDER OF BUSINESS

Committee Rules: Adoption of Amendments to *Bill Presentation*

HEARD IN SIGN-IN ORDER

1.	AB 1789	Quirk-Silva	Department of Housing and Community Development.
3.	AB 1820	Schiavo	Housing development projects: applications: fees and exactions.
4.	AB 1886	Alvarez	Housing Element Law: substantial compliance: Housing Accountability Act.
5.	AB 2023	Quirk-Silva	Housing element: inventory of land: rebuttable presumptions.
6.	AB 2159	Maienschein	Common interest developments: association governance: member election.
7.	AB 2240	Arambula	Farm labor centers: migratory agricultural workers.
8.	AB 2353	Ward	Property taxation: welfare exemption: delinquent payments: interest and penalties.
9.	AB 2361	Davies	Planning and zoning: regional housing needs: exchange of allocation: Counties of Orange and San Diego.
10.	AB 2430	Alvarez	Planning and zoning: density bonuses: monitoring fees .
11.	AB 2460	Ta	Common interest developments: association governance: member election.
12.	AB 2539	Connolly	Mobilehome parks: sale: notice: right of first refusal.

CONTINUED ON THE FOLLOWING PAGE

13.	AB 2560	Alvarez	Density Bonus Law: California Coastal Act of 1976.
14.	AB 2580	Wicks	Historical resources.
16.	AB 2665	Lee	Housing finance: Mixed Income Revolving Loan Program.
17.	AB 2674	Schiavo	The California Affordable and Foster Youth Housing Finance Innovation Act.
18.	AB 2728	Gabriel	Planning and zoning: housing development: independent institutions of higher education and religious institutions.

CONSENT CALENDAR

2.	AB 1801	Jackson	Supportive housing: administrative office space.
15.	AB 2597	Ward	Planning and zoning: revision of housing element: Southern California Association of Governments.
19.	AB 2897	Connolly	Property tax: welfare exemption: community land trusts.

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 1789 (Quirk-Silva) – As Introduced January 4, 2024

SUBJECT: Department of Housing and Community Development

SUMMARY: Expands the types of affordable housing developments that can receive funding from the Portfolio Reinvestment Program, administered by the Department of Housing and Community Development (HCD). Specifically, **this bill:**

1) Defines "challenged development" to mean a development that meets all of the following criteria:

    a) The development is at least 15 years old;

    b) The development either:

        i) Serves very low income or extremely low income households, with an average maximum household income as restricted by existing regulatory agreement of not more than 45% of the gross area median income (AMI), as determined under Federal Internal Revenue Code Section 42;

        ii) Is financed with federal USDA Rural Rental Assistance Program (Section 514 or 521 of the National Housing Act of 1949); and

    c) The development has insufficient access to private or other public resources to complete substantial rehabilitation, as determined by HCD.

2) Expands the types of developments that HCD may make loans or grants to rehabilitate, capitalize operating subsidy or replacement reserves, and extend the long-term affordability of housing projects, to include:

    a) A housing project that is a challenged development; and

    b) A development that has insufficient access to private or other public resources to complete substantial rehabilitation, as determined by HCD.

3) Requires HCD to give priority to projects that are funded using HCD funds and have an affordability restriction that has expired or has a remaining term of less than 10 years, or is otherwise at risk for conversion.

EXISTING LAW:

1) Authorizes HCD to make loans or grants, or both loans and grants, to rehabilitate, capitalize operating subsidy or replacement reserves for, and extend the long-term affordability of department-funded housing projects that have an affordability restriction that has expired, that have an affordability restriction with a remaining term of less than 10 years, or are otherwise at risk for conversion.

2) Provides that if HCD makes a loan or grant to a project that has an existing HCD loan for a multifamily housing project, HCD may approve an extension of the existing loan, the reinstatement of a qualifying unpaid matured loan, the subordination of a loan made the department to new indebtedness, or an investment of tax credit equity for purposes of funding necessary rehabilitation and extending the affordability of the project without complying with the requirements of Chapter 3.9 (commencing with Section 50560).

3) Allows HCD to forgive some or all of the accrued interest on the existing department loan if necessary to facilitate the department's new rehabilitation loan.

4) Allows HCD to establish loan processing or transaction fees for loans or grants, as necessary, in an amount not to exceed the amount necessary to generate sufficient revenue to cover the cost of processing loan transactions. However, the department may waive fees to the extent necessary for project feasibility.

5) Allows HCD to charge a monitoring fee in lieu of the required 0.42% per annum loan payments.

6) Allows HCD to capitalize fees, at its discretion, as necessary to ensure the financial feasibility and long-term affordability of the project. (Health and Safety Code Section 50607)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "The source of California's housing crisis lies in the scarcity of affordable housing, disproportionately affecting low-income families and households. To address this issue, California has developed 500,000 rental homes affordable to low-income families. However, after 15 years or more of occupancy, a considerable number of these developments are in need of significant rehabilitation. Developments with the lowest rents, designed to provide affordable units, are not in a position to leverage debt or tax credits and therefore lack financing options. Without rehabilitation, such challenged developments fall into disrepair, creating health and safety concerns for residents and, ultimately, jeopardizing the loss of precious affordable homes."

Portfolio Reinvestment Program: The California Housing Partnership estimates that over 32,700 of the existing government-subsidized affordable apartments in California are at risk of conversion to market rate in the next 10 years. Many older HCD-funded affordable multi-family rental housing developments are aging and need additional investments. The affordability restrictions on some properties have expired or are close to expiring, placing these units at risk of converting to market-rate. The Portfolio Reinvestment Program was established through the budget beginning in 2021-22 to provide loans and grants to HCD-funded developments that have expired affordability covenants or have remaining term of 10 years. This program has received $250 million in funding (2021-22 included $300 million, the 2022-23 included $50 million, and the 2023-24 budgeted included $100 million).

This bill would expand the types of developments that can qualify for loans or grants to include developments that do not have HCD loans but are defined as "challenged developments." A challenged development is defined as a development that is at least 15 years old, serves either extremely low income or very low income residents or has a USDA loan, and HCD determines

that development cannot access private funds. HCD would be required to prioritize HCD-funded loans with affordability restrictions that have expired or that are at risk of expiring within 10 years. Because these developments have less rental income they are less able to compete for Low Income Housing Tax Credits or other debt.

Arguments in Support: According to the sponsors, California Housing Consortium and California Housing Partnership, "The proposed bill opens up PRP to all challenged developments while maintaining a priority for those that have HCD loans and expiring regulatory agreements. Consistent with tax credit law, the bill defines a challenged development as one with an average affordability of 45% of the area median income or less and insufficient access to private or other public resources to complete substantial rehabilitation."

Arguments in Opposition: None on file.

***Related Legislation*:**

AB 140 (Committee on Budget), Chapter 111, Statutes of 2021: Created the statutory basis for the Portfolio Reinvestment Program.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Consortium (Sponsor)
California Housing Partnership Corporation (Sponsor)
Abode Communities
California Apartment Association
EAH Housing
East Bay Housing Organizations
Housing Authority of the City of San Buenaventura
Housing California
Many Mansions
Mutual Housing California
Nonprofit Housing Association of Northern California
Resources for Community Development
Southern California Association of Non-profit Housing
Tenderloin Neighborhood Development Corporation

Opposition

None on file.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 1801 (Jackson) – As Introduced January 8, 2024

SUBJECT: Supportive housing: administrative office space

SUMMARY: Allows a supportive housing development utilizing the by-right process in current law to include administrative office space in the nonresidential floor area of the development, up to certain limits. Specifically, **this bill**:

1) Adds administrative office space to the existing authorization to include certain amounts of nonresidential floor area in proposed supportive housing projects seeking to utilize the by-right process in AB 2162 (Chiu), Chapter 753, Statutes of 2018.

2) Defines "administrative office space" to mean an organizational headquarters or auxiliary office space utilized by a nonprofit organization for the purpose of providing onsite supportive services at a supportive housing development authorized under AB 2162 (Chiu) and includes other nonprofit operations beyond the scope of the corresponding development, including parking necessary to serve the office space.

3) Limits the total floor area dedicated to administrative office space and associated parking that may be included in a streamlined project to no more than 50% of the total floor area dedicated to residential units.

4) Modifies the definition of "supportive housing" under specified law to specifically include nonresidential uses and administrative office space, as defined, as well as transitional housing for youth and young adults.

EXISTING LAW:

1) Establishes a streamlined, by-right process for supportive housing in zones where multifamily and mixed uses are permitted, including nonresidential zones permitting multifamily uses, if the proposed housing development satisfies the following requirements:

    a) Units within the development are subject to a recorded affordability restriction for 55 years;

    b) One hundred percent of the units, excluding managers' units, within the development are restricted to lower income households and are or will be receiving public funding to ensure affordability of the housing to lower income Californians, as specified;

    c) At least 25% of the units in the development or 12 units, whichever is greater, are restricted to residents in supportive housing who meet criteria of the target population. If the development consists of fewer than 12 units, then 100% of the units, excluding managers' unit, must be restricted to residents in supportive housing;

    d) The developer provides the planning agency with certain specified information;

e) Nonresidential floor area must be used for onsite supportive services in the following amounts:

i) For a development with 20 or fewer units, at least 90 square feet; or

ii) For a development of more than 20 units, at least 3% of the total nonresidential floor area must be provided for onsite supportive services that are limited to tenant use, including, but not limited to, community rooms, case management offices, computer rooms, and community kitchens.

f) The developer replaces any dwelling units on the site of the supportive housing development in the manner provided as specified; and

g) Units within the development include at least one bathroom and a kitchen or other cooking facilities, including, at a minimum, a stovetop, sink, and refrigerator. (Government Code (GC) Section 65651(a))

2) Allows a local government to require a supportive housing development subject to the by-right process in 1) to comply with written, objective development standards and policies; however, the standards and policies must apply generally to other multifamily development within the same zone. (GC 65651(b)(1))

3) Requires a local government's review of a supportive housing development under 2) to be conducted consistent with [65589.5(f)] and establishes that the review does not constitute a "project" for purposes of the California Environmental Quality Act. (GC 65651(b)(2))

4) Defines, for purposes of the by-right process in 1), "supportive housing" to mean housing where:

a) At least 40% of the units are targeted to individuals or families experiencing chronic homelessness, homeless youth, or individuals exiting institutional settings who were homeless when entering the institutional setting, have a disability, and who resided in the setting for at least 15 days; and

b) The project provides or demonstrates collaboration with programs that provide services that meet the needs of the residents, among other requirements. (Health and Safety Code Section 50675.14)

5) Defines "homeless youth" to mean either of the following:

a) A person who is not older than 24 years of age and is either homeless or at risk of becoming homeless, is no longer eligible for foster care on the basis of age, or has run away from home; or

b) A person who is younger than 18 years of age, emancipated, and homeless or at risk of becoming homeless. (GC 12957(e))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement*:* According to the author, "California has a moral imperative to provide the needed housing and supportive services to our unhoused populations. AB 1801 will provide greater clarity and cost efficiency to those non-profits who seek to build affordable housing for the thousands of Californians in need. AB 1801 helps accomplish this goal by providing clarity to current law and will allow for the construction and development of administrative office spaces, facilities, and parking on the same grounds as the supportive housing projects. We know that when the administrative and other needed facilities are on the same site as the housing, people are better served and set up to thrive."

Supportive Housing: State law defines supportive housing to be housing with no limit on length of stay, that is occupied by homeless persons or families, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Supportive housing is widely acknowledged as a cost-effective model for providing housing and services to people who would otherwise be institutionalized or at risk of institutionalization, as well as reducing chronic homelessness.

Despite its successes, supportive housing continues to face challenges. Supportive housing projects are often opposed by neighborhood groups that are concerned about the impact of such developments on the surrounding area. Because the land use approval process requires many steps and public hearings, and affords local governments a wide degree of latitude to deny or condition projects, opponents of supportive housing have historically been able to use these processes to block projects. CEQA has also been used to block projects that do not otherwise qualify for an exemption.

Streamlining: Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. Some local ordinances provide "streamlined" or "ministerial" processes for approving projects that are permitted "by right" – the zoning ordinance clearly states that a particular use is allowable, and local government does not have any discretion regarding approval of the permit if the application is complete. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meeting standards for building quality, health, and safety. Most housing projects that require discretionary review and approval are subject to review under CEQA, while projects permitted ministerially generally are not.

SB 2 (Cedillo), Chapter 663, Statutes of 2008, took the first step toward removing local land use barriers for emergency shelters and supportive housing by requiring localities to accommodate their need for emergency shelters on sites where the use is allowed without a conditional use permit (CUP), and requiring cities and counties to treat transitional and supportive housing projects as a residential use of property. Local governments must treat supportive housing the same as other multifamily residential housing for zoning purposes and can only apply the same restrictions on multifamily housing in the same zone to supportive housing.

Recognizing the continuing difficulties with moving supportive housing developments through a discretionary process, in 2018, AB 2162 (Chiu), Chapter 753, created a by-right approval process for certain supportive housing developments so long as they met specific zoning and unit requirements. The bill established supportive housing as a use "by right" in all zones where multifamily and mixed uses are permitted, including commercial zones, so long as at least 25% or 12 units of the proposed project – whichever is greater – are restricted to people experiencing

or at risk of homelessness. The remaining units, excluding managers' units, must be restricted to lower income households. A project must also dedicate a minimum amount of floor area in the development to providing onsite supportive services – either 90 square feet in projects with 20 units or fewer, or 3% of the total nonresidential floor area in projects with more than 20 units.

The author's office points out that in AB 2162, use of residential zoned land for the provision of supportive services is acknowledged, but it is unclear if dedicating other space in the development to other nonresidential activities may trigger a local jurisdiction to consider the use as "Office/Administrative." This would be considered a non-conforming use, and may require a CUP to proceed. If CUP is required, ministerial approval streamlining is generally void, and a lengthy and costly discretionary approval process is required.

To eliminate this uncertainty, this bill would make clear that a supportive housing development may include administrative office space in certain amounts and still access the by-right approval process established by AB 2162. Specifically, the amount of administrative office space and associated parking to support the office space must not exceed 50% of the total floor area dedicated to residential units. The bill defines "administrative office space" to mean an organizational headquarters or auxiliary office space used by a nonprofit to provide onsite supportive services and other nonprofit operations that may be beyond the scope of the attached supportive housing development, as well as parking necessary to support the office.

This modification could help a nonprofit service organization co-locate its administrative offices with onsite services within a streamlined, ministerially approved supportive housing development, cutting down on overhead costs and reducing the need for leasing additional commercial office space. The co-location may benefit the supportive housing residents as well, if the office spaces can be used for resident service needs like benefits paperwork processing, case management, office printing, and other services onsite.

Arguments in Support: None on file.

Arguments in Opposition: None on file.

Related Legislation:

AB 2162 (Chiu), Chapter 753, Statutes of 2018: Established a by-right, ministerial approval process for supportive housing developments that meet certain criteria in certain jurisdictions.

Double Referred*:* This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 1820 (Schiavo) – As Amended April 1, 2024

SUBJECT: Housing development projects: applications: fees and exactions

SUMMARY: Establishes a process through which development proponents can request preliminary project fee and exaction estimates when submitting a preliminary application, and receive a final list of all fees and exactions related to the project after final approval, within a specified timeframe. Specifically, **this bill**:

1) **Preliminary good-faith estimate.** Allows development proponents to request, at the time of preliminary application for a housing development, a preliminary fee and exaction estimate, as well as a fee schedule, from a local agency, including cities, counties, special districts, and local publicly owned utilities.

    a. The city or county is required to provide a fee and exaction estimate to the requesting development proponent within 20 business days of preliminary application submittal.

    b. For development fees imposed by an agency other than a city or county, such as school district and special district fees, the development proponent must request the preliminary fee and exaction estimate directly from the agency that imposes the fee.

        i. Special districts are not required to include an estimate of fees associated with the cost of providing electrical or gas service from a local publicly owned utility to the housing development project at this time, as the bill excludes those cost estimates from the definition of a "fee" in this section.

    c. A development proponent may request a fee schedule from a city, county, or special district, including a schedule outlining the cost of providing electrical or gas services from a local publicly owned utility, which the local agency shall provide upon request.

2) **Final list of fees and exactions.** Requires the public agency to provide the development proponent with a final list of fees and exactions that will apply to the project upon final approval.

    a. Final approval means that the housing development project has received all necessary approvals to be eligible to apply for, and obtain, any required building permits. Cities and counties are required to provide this fee information within 20 business days of final approval.

    b. For fees imposed by an agency other than a city or county, the development proponents shall request the total amount of all fees and exactions imposed from each agency that will apply fees to the project.

3) **Clarification of development proponent responsibility.** Clarifies that the development proponent is under no obligation to respond to requests from a city or county for the total amount of fees and exactions associated with a project. This request is made by the city or county at the time of issuance of a certificate of occupancy or the final inspection, whichever occurs later, and the city or county is required to post this information on their website.

EXISTING LAW:

1) Defines "housing development project" as a use consisting of any of the following:

    a. Residential units only;

    b. Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; or

    c. Transitional housing or supportive housing. (Government Code (GOV) 65940.1)

2) Establishes a process for a project applicant to file a preliminary application for a housing development project, and establishes that a housing development project that has submitted a preliminary application must be subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was deemed to be complete. (GOV 65941.1)

3) Establishes the Mitigation Fee Act (GOV 66000-66025) that requires a local agency to do all of the following when establishing, increasing, or imposing a fee on a development project:

    a. Identify the purpose of the fee;

    b. Identify the use to which the fee is to be put;

    c. Determine how there is a nexus between the fee's use and the type of development project on which the fee is imposed; and

    d. Determine how there is a nexus between the need for a public facility and the type of development project on which the fee is imposed.

4) Requires a city, county, or special district that has an internet website to make information available on its internet website, including the current schedule of fees, exactions, and affordability requirements imposed by that city, county, or special district, applicable to a proposed housing development project. (GOV 65940.1)

5) Requires a city or county to request from a development proponent, upon certificate of occupancy or final inspection, whichever occurs last, the total amount of fees and exactions associated with the project, and post that information on its internet website. (GOV 65940.1)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 1820 attempts to bring transparency to developer fees by requesting that local jurisdictions to provide the fee and exaction statements prior to the construction of the project. This measure of clarity is an attempt for housing providers to have a financial certainty when attempting to provide affordable homes to the market.

Currently, State law gives local jurisdictions broad authority to levy impact fees on builders. Unfortunately, those fees are often not easily identified prior to issuance of a permit and construction. Many jurisdictions practice a "pay-as-you-go" methodology as the project goes through the many phases of permitting and construction.

A 2018 study conducted by the Terner Center for Housing Innovation at the University of California, Berkeley, found that fees and exactions can amount to up to 18 percent of the median home price, that these fees and exactions are extremely difficult to estimate, and that fees and exactions continue to rise in California while decreasing nationally. Further, escalating fee and exaction costs make it more difficult for builders to deliver new housing for sale or rent at affordable prices.

The study found significant implications for the cost and delivery of new housing in California. Specifically, without standardized tools to estimate development fees, builders cannot accurately predict total project costs during the critical predevelopment phase.

Affordable housing projects can be subject to exorbitant fees that raise the cost of the building, reducing the already narrow margins that affordable housing developers have and the unpredictability of these fees can delay or derail projects altogether.

Further, this measure was an attempt to prevent a "needle-in-a-haystack" approach in searching for the appropriate costs affiliated with the project. Unfortunately, a survey conducted by SPUR in 2021 found that "many jurisdictions have yet to come into compliance with AB 1483, as their websites often have incomplete or unreliable information regarding development fees and requirements."

SB 330 – Housing Crisis Act: SB 330 (Skinner) Chapter 654, Statutes of 2019, established the Housing Crisis Act. This bill, among other provisions, creates more certainty for housing development proponents through a preliminary application and project "vesting" process. SB 330 allows developers to submit a complete preliminary application to a local government and pay a permit processing fee, which locks in the ordinances, policies, and standards in effect at the time of submission. This means that any changes to zoning, development standards, fees, or exactions that occur after the complete preliminary application is submitted will not apply to that project, unless the fees, charges, or monetary exactions result from an automatic annual adjustment based on an independently published cost index referenced in the establishing ordinance. The preliminary application must include specific information, such as the number of units, density, and location of the proposed development.

Once a complete preliminary application is submitted, the project is considered "vested." Through the "vesting" provisions established via the preliminary project application process, development proponents gain certainty about which fees, ordinances, policies, and standards that will apply to their projects. This process also makes it feasible for the local agencies and special

districts implicated by this bill to comply with the bill's provisions, as the public agency should know which fees should apply to the proposed development based on when the complete preliminary application was submitted.

Impact fees and exactions – added uncertainty and costs: Development fees serve many purposes and can be broadly divided into two categories: service fees and impact fees. Service fees cover staff hours and overhead, and are used to fund the local agency's role in the development process such as paying for plan reviews, permit approvals, inspections, and any other services related to a project moving through various local departments. Impact fees refer generally to fees that offset the public costs of new infrastructure incurred by the larger community. In the wake of the passage of Proposition 13 in 1978 and the loss of significant property tax revenue, local governments have also turned to development fees as a means to pay for new infrastructure. According to the UC Berkeley Terner Center for Housing Innovation, between 2008 and 2015, California fees rose 2.5%, while the national average decreased by 1.2%.[1] Development fees can comprise 17% of the total development costs of new housing, and in California in 2015, impact fees were nearly three times the national average.[2]

The Mitigation Fee Act governs the imposition, collection, and use of impact fees collected by local governments when reviewing and approving development proposals.

Key aspects of the Mitigation Fee Act include:

1. **Nexus Requirement**: The Act requires a clear "nexus" or connection between the fee charged and the impact created by the development. This means that the fees collected must be used to address the specific impacts that the new development is expected to have on public facilities and services.

2. **Proportionality**: The fees charged must be proportional to the impact of the development.

3. **Accountability**: Local governments are required to establish separate accounts for the fees collected and to use the funds solely for the intended purposes. They must also provide annual reports on the status of the fees, including the balance and how the funds have been used.

4. **Timing of Fee Payment**: The Act specifies when fees can be collected, generally at the time of final inspection or when certificate of occupancy is issued, with some exceptions.

5. **Refunds**: If the fees collected are not used within five years, and specific findings are not made, the Act provides for the refund of the fees.

The Mitigation Fee Act plays a crucial role in ensuring that new developments contribute to the cost of expanding and maintaining public infrastructure and services, while also providing a legal framework to ensure that fees are fair, transparent, and directly related to the impacts of the development.

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[1] Sarah Mawhorter, David Garcia and Hayley Raetz, *It All Adds Up: The Cost of Housing Development Fees in Seven California Cities*, Terner Center for Housing Innovation, March 2018, https://ternercenter.berkeley.edu/research-and-policy/it-all-adds-up-development-fees
[2] IBID.

AB 1483 (Grayson), Chapter 662 Statutes of 2019, required all local agencies to post fees applicable to new housing developments under the Mitigation Fee Act on their website. However, a 2021 policy brief prepared by SPUR in consultation with the UC Berkeley Terner Center for Housing Innovation analyzed compliance with AB 1483 and found that less than half of the jurisdictions examined complied with this requirement.[3] A Terner Center study found that even when local jurisdictions did post the nexus fee studies mandated under the Mitigation Fee Act, those studies were often difficult to find or outdated.[4]

The fees and exactions charged from local agency to local agency vary, but often add up to between 6% and 18% of total construction cost for a housing development project.[5] Various local agencies, including cities and counties, utility districts, and special districts (of which there are over 5,000 in the state) all may levy their own fees and exactions, and have varied approaches to complying with the posting requirements established in AB 1483.[6] This lack of transparency around fees and exactions, particularly at the outset of a project, result in unforeseen project costs, increased risks for developers, and project delays – all of which may result in fewer homes ultimately being built. This especially creates barriers for smaller and newer community-led developers, who often lack the experience, connections, and up-front capital to navigate the uncertainty associated with local fees and exactions.[7]

As such, although AB 1483 requires transparency around fees to help developers assess costs, the general lack of compliance with that bill on behalf of local agencies makes it difficult for housing development proponents to gain the certainty around which fees will apply to their development proposals. Even if all fees were posted to a local agency's website in compliance with AB 1483, it would be difficult for the development proponent to verify the accuracy of the posted materials, or in some instances, even to locate those materials.

AB 1483 would provide developers with a ballpark estimate of the fees that they will be expected to pay for their housing development proposal at the onset of their project, and will provide them with a clear picture of fees they will need to pay when the project takes shape and is approved. This certainty will help to mitigate delays in advancing a project, or in some instances, the inability to pay for unexpected fees associated with housing projects under the Mitigation Fee Act.

AB 602 (Grayson), Chapters 347 Statutes of 2022, required a city or county to request from a development proponent the total amount of fees and exactions associated with their development upon issuance of certificate of occupancy, and to post the information on their website. AB 602 allows local governments to include a disclaimer regarding the accuracy of the information provided. This bill would clarify that the development proponent is not obligated to respond to that request for information, and will not face any negative consequences for not responding to the request, or for the content of the response. AB 602 requires the local government to request fee and exaction information from developers, but does not compel the developers to provide

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[3] SPUR. *How Much Does It Cost to Permit a House?* May 2021, www.spur.org/sites/default/files/2021-07/SPUR_How_Much_Does_It_Cost_To_Permit_A_House_0.pdf.
[4] Hayley Raetz et al., *Residential Impact Fees in California*, Terner Center for Housing Innovation, August 2019, https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/Residential_Impact_Fees_in_California_August_2019.pdf
[5] Sarah Mawhorter, et al.
[6] SPUR.
[7] SPUR.

that information. AB 602 does not authorize the local government to take any action with respect to the request for fee and exaction information other than to request it, and subsequently post whatever information is provided by the developer.

Arguments in Support: According to SPUR, the Sponsor, "AB 1820 is a "good government" measure that seeks to provide developers financial certainty and predictability when estimating the cost of local development impact fees on proposed housing projects.

State law gives local jurisdictions broad authority to levy impact fees on builders. Unfortunately, those fees are often not easily identified prior to issuance of a permit and construction. Many jurisdictions practice a "pay-as-you-go" methodology as the project goes through the many phases of permitting and construction.
By requiring local jurisdictions to timely provide an itemized list and estimated total sum amount of all fees and exactions that will apply to a residential development that has submitted a preliminary application, this measure will create certainty and predictability for proposed housing developments."

Arguments in Opposition: According to the California Special Districts Association (CSDA), "Special Districts are not land-use authorities and do not directly receive applications or notice their completion. Special districts do not approve applications nor issue building permits or entitlements. It is not reasonable or plausible for special districts to provide and commit to an itemization of fees and charges at the point of a completed application. At this stage, the application is not approved by the land use authority (cities or counties), nor have conditional or approved maps been presented. This stage of the proposed development is not the appropriate juncture to commit to all fees in all all circumstances for projects that could be months or years away from approval by the land use authority, let alone construction. For many service types, there may be insufficient data to commit to an itemization of fees that could change as the project changes over time and throughout the various stages of mapping and approvals."

Committee Amendments: Staff recommends the bill be amended as follows:

- Modify Government Code Section 65941.1 to only require a fee schedule from agencies other than a city or county at the time of preliminary application, not a full preliminary fee and exaction estimate.

- Modify Government Code Section 65943.1 to provide all agencies, including school districts and special districts, with 20 business days to provide the applicant with a final sum total of all fees and exactions associated with the project, once requested by the development proponent upon final approval.

65941.1

(b)(2) For development fees imposed by an agency other than a city or county, including fees levied by a school district or a special district, the development proponent shall request the ~~**preliminary fee and exaction estimate**~~ ***fee schedule*** from the agency that imposes the fee.

65943.1

(a)(2) For development fees imposed by an agency other than a city or county, including fees levied by a school district or a special district, the development proponent shall request the final

sum total amount of all fees and exactions imposed by the agency that will apply to the project ***and the agency shall provide the development proponent with this information within 20 business days.***

Related Legislation:

AB 3012 (Grayson), 2024. This bill would require jurisdictions to develop, and make publicly accessible, fee estimate tools to calculate estimated fees and exactions. This bill is pending hearing in the Committees of Local Government and Housing and Community Development.

AB 602 (Grayson), Chapter 347, Statutes of 2021. This bill established several new requirements for local governments in connection with adopting and imposing fees and exactions, including new nexus study and capital facilities planning obligations. The bill also requires local governments to request fee and exaction information from developers and then post whatever information is voluntarily provided on the local agency's to increase transparency with respect to the overall level of fees and exactions imposed on new housing in the jurisdiction.

AB 1483 (Grayson), Chapter 662, Statutes of 2019. This bill requires a city, county, or special district to maintain on its internet website, as applicable, a current schedule of fees, exactions, and affordability requirements imposed by the city, county, or special district, including any dependent special district and annual fee reports or annual financial reports, as specified. The bill requires a city, county, or special district to provide on its internet website an archive of impact fee nexus studies, cost of service studies, or equivalent, as specified.

AB 1484 (Grayson), 2019: This bill would have required local agencies to publish fees for housing development projects on their internet website, and would have frozen “impact and development fees that are applicable to housing developments” for two-years after a development application was deemed complete. This bill died in the Senate Committee on Rules.

SB 330 (Skinner), Chapter 654, Statutes of 2019. This bill established a process for a project applicant to file a preliminary application for a housing development project, and established that a housing development project that has submitted a preliminary application must be subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was deemed to be complete.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Bay Area Planning and Urban Research Association (Sponsor)
California Building Industry Association (Co-Sponsor)
California Yimby (Co-Sponsor)
Abundant Housing LA
Bay Area Council
California Apartment Association
California Building Industry Association
California Chamber of Commerce

California Community Builders
California Community Builders
California Hispanic Chambers of Commerce
Circulate San Diego
CivicWell
East Bay YIMBY
Fieldstead and Company
Fremont for Everyone
Grow the Richmond
Habitat for Humanity California
Housing Action Coalition
Housing Action Coalition
Housing California
Housing Trust Silicon Valley
How to ADU
LeadingAge California
MidPen Housing
Mountain View Yimby
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
People for Housing Orange County
Progress Noe Valley
Resources for Community Development
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
Silicon Valley Leadership Group
South Bay YIMBY
Southside Forward
Streets for People
Urban Environmentalists
Ventura County YIMBY
YIMBY Action

Opposition

California Special Districts Association

Oppose Unless Amended

California Association of Recreation & Park Districts
California State Association of Counties (CSAC)
League of California Cities
Rural County Representatives of California (RCRC)
Urban Counties of California (UCC)

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 1886 (Alvarez) – As Amended April 1, 2024

SUBJECT: Housing Element Law: substantial compliance: Housing Accountability Act

SUMMARY: Clarifies that a housing element is substantially compliant with Housing Element Law, when both a local agency adopts the housing element and Department of Housing and Community Development (HCD) or a court finds it in compliance, for purposes of specified provisions of the Housing Accountability Act (HAA). Specifically, **this bill**:

1) Provides that when a planning agency adopts a housing element or amendment without changes after receiving feedback from HCD, the agency must submit to HCD its adopted element or amendment and its written findings that explain the reasons the legislative body believes that the draft element or amendment substantially complies with Housing Element Law, despite the findings of the department.

2) Requires HCD to review findings that explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with Housing Element Law, despite the findings of the department, make a finding as to whether the element or amendment is in substantial compliance with the law, and report that finding to the planning agency.

3) Provides that for purposes of disapproving or conditionally approving a housing development project for very low, low-, or moderate-income households, a housing element or amendment is considered substantially compliant with the Housing Element Law when both of the following conditions are satisfied:

    a) The local agency adopts the housing element or amendment in accordance with existing law; and

    b) HCD or a court of competent jurisdiction determines the adopted housing element or amendment is in substantial compliance with Housing Element Law.

4) Provides that, declaratory of existing law, a housing element or amendment shall continue to be considered in substantial compliance with Housing Element Law until either of the following occur:

    a) HCD or a court of competent jurisdiction determines that the adopted housing element or amendment is no longer in substantial compliance with this article; or

    b) The end of the applicable housing element cycle.

5) Provides that in any legal proceeding initiated to enforce the provisions of Housing Element Law, HCD's findings as to whether or not a local agency has a compliant housing element shall create a rebuttable presumption of validity as to whether the adopted element or amendment substantially complies with Housing Element Law.

6) Provides that for purposes of disapproving or conditionally approving a housing development project for very low, low-, or moderate-income households, a housing element or amendment shall be considered in substantial compliance, as determined by HCD or a court of competent jurisdiction, when a preliminary application, including all of the information required by SB 330 (Skinner), Chapter 654, Statutes of 2019, was submitted or, if a preliminary application was not submitted, when a complete application pursuant to SB 330 (Skinner) was submitted. This provision is declaratory of existing law.

EXISTING LAW:

1) Requires each city and county to adopt a housing element, which must contain specified information, programs, and objectives, including:

    a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality's existing and projected housing needs for all income levels; an inventory of land suitable and available for residential development; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need, among other things;

    b) A statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and

    c) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element, including actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the local government's share of the regional housing need for each income level that could not be accommodated on sites identified in the sites inventory without rezoning, among other things. (Government Code (GC) Section 65583(a)-(c))

2) Requires a local government's inventory of land suitable for residential development to be used to identify sites throughout the community that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels. Defines "land suitable for residential development" to include:

    a) Vacant sites zoned for residential use;

    b) Vacant sites zoned for nonresidential use that allows residential development;

    c) Residentially zoned sites that are capable of being developed at a higher density, including sites owned or leased by a jurisdiction; and

d) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary and as specified. (GC 65583.2(a))

3) Requires a planning agency to submit a draft housing element revision to HCD at least 90 days prior to adoption of a revision of its housing element pursuant to statutory deadlines, or at least 60 days prior for a draft amendment. Requires the local government to make the first draft revision of the housing element available for public comment for at least 30 days and, if any comments are received, requires the local government to take at least 10 business days after the 30-day public comment period to consider and incorporate public comments into the draft revision prior to submitting it to HCD. For any subsequent draft revision, the local government must post the draft on its website and email a link to all individuals and organizations that have previously requested notices related to the housing element at least seven days before submitting the draft revision to HCD. (GC 65585(b)(1))

4) Requires HCD to review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision or within 60 days of receipt of a subsequent draft amendment or an adopted revision or adopted amendment to a housing element. Prohibits HCD from reviewing the first draft submitted for each housing element revision until the local government has made the draft available for public comment for at least 30 days and, if comments were received, has taken at least 10 business days to consider and incorporate public comments. (GC 65585(b)(3))

5) Requires HCD, in its written findings, to determine whether the draft element or draft amendment substantially complies with housing element law. (GC 65585(d))

6) Requires a local government's legislative body to consider HCD's findings prior to the adoption of its draft element or draft amendment, and provides that if HCD's findings are not available within the time limits specified, the legislative body may act without them. (GC 65585(e))

7) Requires a legislative body to take one of the following actions, if HCD finds that the draft element or draft amendment dos not substantially comply:

   a) Change the draft element or draft amendment to substantially comply; or

   b) Adopt the draft element or draft amendment without changes, in which case the legislative body must include in its resolution of adoption written findings that explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with housing element law despite HCD's findings. (GC 65585(f))

8) Requires the planning agency to submit a copy of an adopted housing element or amendment promptly to HCD following adoption. (GC 65585(g))

9) Requires HCD to review adopted housing elements or amendments and report its findings to the planning agency within 60 days. (GC 65585(h))

10) Requires HCD to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law, including any failure to implement any program actions included in the housing element. Requires HCD to

issue written findings to the local government as to whether the action or failure to act substantially complies with housing element law, and provide a reasonable time no longer than 30 days for the local government to respond to the findings before taking any other action, including revocation of substantial compliance. (GC 65585(i)(1)(A))

11) Authorizes HCD, if it finds that an action or failure to act under 10) does not substantially comply with housing element law, and if it has issued findings that an amendment to the housing element substantially complies with this article, to revoke its findings until it determines that the local government has come into compliance. (GC 65585(i)(2)(B))

12) Requires HCD to notify the local government and authorizes HCD to notify the office of the Attorney General that the local government is in violation of state law if HCD finds that the housing element or an amendment to the element, or any action or failure to act under 10), does not substantially comply with housing element law or that any local government has taken an action in violation of various specified housing laws. (GC 65585(j))

13) Requires local governments on an eight-year housing element cycle with insufficient sites inventories to complete the rezoning of sites, including adoption of minimum density and development standards, no later than three years after either the date the housing element is adopted, as specified, or the date that is 90 days after the receipt of comments from HCD, whichever is earlier, unless the deadline is extended pursuant to existing law. (GC 65583(c)(1)(A))

14) Notwithstanding 13), requires a local government that fails to adopt a housing element that HCD has found to be in substantial compliance with the law within 120 days of the statutory deadline for adoption of the housing element to complete the rezoning of sites no later than one year from the statutory deadline for adoption of the housing element. (GC 65583(c)(1)(A) and GC 65588(e)(4)(C)(i))

15) Establishes a rebuttable presumption of the validity of a housing element or amendment in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, if HCD has found that the element or amendment substantially complies with housing element law. (GC 65589.3)

16) Prohibits a local agency from disproving a housing development project, that includes either 20%, very low, low income housing, 100% moderate income housing, an emergency shelter, or including farmworker housing condition the approval of the housing development in a manner that renders the housing development infeasible for very low, low, or moderate income households, or an emergency shelter, including through the use of design review standards, unless it makes written finding, based on a preponderance of the evidence that the jurisdiction has adopted a housing element that has been revised consistent with exiting law, that is in substantial compliance with Housing Element Law, and the jurisdiction has met or exceed its share of the housing needs allocation (RHNA) for the planning period, for the income category proposed for the housing development project, if the disapproval or conditional approval is not based on housing discrimination, as specified in existing law (GC 65598.5).

17) Requires a court, if it finds any portion of a general plan, including a housing element, out of compliance with the law, to include within its order or judgment one or more of the following remedies for any or all types of developments or any or all geographic segments of the city or county until the city or county has complied with the law, including;

    a) Suspension of the city or county's authority to issue building permits;

    b) Suspension of the city or county's authority to grant zoning changes and/or variances;

    c) Suspension of the city or county's authority to grant subdivision map approvals;

    d) Mandating the approval of building permits for residential housing that meet specified criteria;

    e) Mandating the approval of final subdivision maps for housing projects that meet specified criteria; and

    f) Mandating the approval of tentative subdivision maps for residential housing projects that meet specified criteria. (GC 65755)

18) Defines a "compliant housing element" to mean an adopted housing element that has been found to be in substantial compliance with the requirements of Housing Element Law by the department pursuant to Section 65585. (GC 65589.9)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, **"**Despite being a powerful tool to incentivize housing in cities that are refusing to build enough, the so-called Builder's Remedy, which prohibits a city without a compliant housing element from denying a project based on its zoning code or general plan, was largely unused for decades. However, given the recent change in support for more housing, which has shifted the power dynamic between local governments and developers, we have seen a significant uptick in Builder's Remedy projects. Unfortunately, we are also beginning to see Builder's Remedy related lawsuits after cities erroneously reject projects using self-certification arguments. This issue directly results from a lack of clarity in the code related to compliance with Housing Element Law. AB 1886 seeks to resolve this problem by clarifying that HCD determination of compliance is the trigger for the Builder's Remedy, development standards only apply if a city is in compliance, and Builder's Remedy projects remain eligible if the application was submitted while the city was not in compliance."

Housing Element: Cities and counties are required to develop a housing element as part of the general plan every eight years (every five years for some rural areas). Cities must submit their housing element to HCD for approval by a specified date and most local governments should have adopted their housing element or be in the process of finalizing their sixth housing element. Each local agency receives a total number of housing units to plan for broken down by income category. The housing element must identify programs to increase the supply of housing, address inequities in the housing market, and reduce barriers to producing housing and an inventory of sites that are zoned for housing at the density necessary to result in housing. Out of 598 cities,

212 have not adopted a compliant housing element and are therefore considered out of compliance with the law.

Local governments have a statutory deadline to submit a housing element based on region. Ninety days before the deadline to adopt a housing element, cities must submit a draft to HCD. HCD is required to review the draft element within 90 days of receipt and provide written findings as to whether the draft amendment substantially complies with Housing Element Law. If HCD finds that the draft element does not substantially comply with the law, the local agency may either make changes to the draft element to substantially comply with the law or adopt the element and make findings as to why a local agency believes that the draft element or draft amendment substantially complies with the law despite the findings of the department. Following adoption of a housing element, a local agency submits the element to HCD. When a local government adopts their housing element without making the changes HCD provides, the process has been called "self-certification." Despite the fact that the process allows a local agency to adopt a housing element without making the changes required by HCD to be in substantial compliance, a local agency is not considered compliant until receiving ultimate approval from HCD.

Over the last seven years, the Legislature has strengthened the consequences for local agencies who are out of compliance or who amend their zoning after their housing element is found compliant. Local agencies cannot qualify for state funding for affordable housing or infrastructure for affordable housing without a compliant housing element. AB 72 (Santiago), Chapter 72, Statutes of 2017 gave HCD explicit authority to find a local agency's housing element out of substantial compliance if it determines that the local agency acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the Attorney General (AG). Both the AG and HCD have units with dedicated staff to enforce housing element law and other land use laws passed by the legislature. The AG can also sue a city for non-compliance and the court can issue fines up to $10,000 a day after the local agency fails to comply for an additional 12 months. After an additional six months of non-compliance, the court may increase the fines by six times.

In addition, an action can be brought to challenge the validity of a local agency's general plan, including a housing element. If a court determines that a housing element does not substantially comply with Housing Element Law, the court is required to take actions, including suspending the local government's authority to issue any kind of building permit (renovations, commercial and residential building permits); suspending the local agency's authority to grant zoning changes and/or variances; suspending the local agency's authority to grant subdivision map approvals; mandating the approval of building permits for residential housing that meet specified criteria; mandating the approval of final subdivision maps for housing projects that meet specified criteria; and mandating the approval of tentative subdivision maps for residential housing projects that meet specified criteria. If HCD has determined that a city's adopted housing element does not substantially comply with state law, a party may send a notice to the city within two years of the adoption of that housing element, and a cause of action for that party to challenge the housing element will accrue (at the latest) 60 days after the notice is sent.

The City of Beverley Hills "self-certified" their housing element but failed to adopt the necessary changes HCD required to be in compliance. In January of 2023, Californians for Homeownership sued the City of Beverley Hills for failing to adopted a housing element that included adequate sites to meet the city's regional housing needs allocation (RHNA) obligations.

The court found in favor of the plaintiff and suspended the city's authority to take any of the actions previously listed. On March 18, 2024, HCD approved Beverley Hills' housing element, a plan that creates capacity for 3,100 additional housing units. Local agencies with non-compliant housing elements are also subject the Builders Remedy.

Housing Accountability Act (HAA)/Builder's Remedy: In 1982, the Legislature enacted the Housing Accountability Act (HAA). The purpose of the HAA is to help ensure that a city does not reject or make infeasible housing development projects that contribute to meeting the housing need determined pursuant to the Housing Element Law without a thorough analysis of the economic, social, and environmental effects of the action and without complying with the HAA. The HAA restricts a city's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA does not preclude a locality from imposing developer fees necessary to provide public services or requiring a housing development project to comply with objective standards, conditions, and policies appropriate to the locality's share of the RHNA.

One such constraint on local governments authority to disprove housing, which has gained recent attention is the "Builder's Remedy." The Builder's Remedy prohibits a local government from denying a housing development that includes 20% lower-income housing that does not conform to the local government's underlying zoning, if the local government has not adopted a compliant housing element. A number of developers have attempted to use the Builders Remedy in the last few years.

The City of La Cañada Flintridge failed to adopt a compliant housing element. Using the Builder's Remedy, a developer proposed a project for 80 units of affordable housing on church-owned land that was not zoned for housing or for density to accommodate the proposed project. The City denied the project and developer sued. The City of La Cañada Flintridge argued they were not required to process an application under the HAA to approve a housing development that did not comply with their underlying zoning because they had "self-certified" their housing element by adopting a housing element, even though it was not certified as compliant by HCD. The court ruled that the city was not in compliance despite the fact that they had "self-certified" and found the housing element the city adopted out of compliance with Housing Element Law for various reasons.

Although statute is clear that HCD determines if a housing element is in compliance, this bill would further clarify that a housing element is in compliance when both a local agency has adopted a housing element and HCD had found the element in compliance. This bill would eliminate arguments made by local governments that by "self-certifying" or adopting a housing element that does not reflect HCD's findings, the local government satisfies the requirement for compliance per the Builder's Remedy.

Rebuttable Presumption: Existing law establishes a rebuttable presumption of the validity of a housing element or amendment in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, if HCD has found that the element or amendment substantially complies with housing element law. This bill restates the rebuttable presumption for purposes of legal proceedings. This provision is redundant and seems unnecessary.

Arguments in Support: According to the sponsor, SPUR, "AB 1886 clarifies that HCD or a court of competent jurisdiction determines whether the housing element substantially complies

with the law and, therefore, when the Builder's Remedy may be utilized. Existing law affirms such projects submitted during the period of non-compliance must be accepted."

Arguments in Opposition: The City of Corona is opposed to creating a rebuttable presumption of validity for HCD's findings when reviewing a planning agency's draft housing element. The City contends that HCD's review of housing elements is inconsistent and not objective.

Related Legislation:

AB 1893 (Wicks) (2024), in the current Legislative Session, would set density and objective standards for housing development projects that cannot be denied or provided conditional approval if a local agency does not have a compliant housing element. This bill is set to be heard in Assembly Housing and Community Development on April 17, 2024.

AB 2023 (Quirk-Silva) (2024), in the current Legislative Session, would create a rebuttable presumption of invalidity in any legal action challenging a local government's action or failure to act if the Department of Housing and Community Development (HCD) finds that the action or failure to act does not substantially comply with the local government's adopted housing element or housing element obligations, among other changes. This bill is set to be heard in Assembly Housing and Community Development on April 10, 2024.

Policy Considerations: This bill amends Housing Element Law to specifically state the standard for determining if a housing element is considered compliant for purposes of the HAA and the prohibition on local agencies disproving housing developments that qualify for the Builders Remedy. However, there are other penalties for non-compliance including fines, revocation of permitting authority, and inability to access state funding for affordable housing and infrastructure for affordable housing. For clarity, the committee may wish to amend this bill to remove the reference to the HAA and the provisions of Builders Remedy to avoid any confusion in the standard for compliance for all potential remedies. The intent of this bill will still be accomplished because the HAA includes a cross reference to GC 65585 for purposes of establishing compliance with Housing Element Law.

Committee amendment:

h) *(1)* The department shall, within 60 days, review adopted housing elements or amendments and *any findings pursuant to paragraph (2) of subdivision (f), make a finding as to whether the adopted element or amendment is in substantial compliance with this article, and* report its findings to the planning agency.

(2) (A) ~~***For purposes of subdivision (d) of Section 65589.5, a***~~ ***A*** *housing element or amendment shall be considered to be in substantial compliance with this article when both of the following conditions are satisfied:*

(i) The local agency adopts the housing element or amendment in accordance with this section.

(ii) The department or a court of competent jurisdiction determines the adopted housing element or amendment to be in substantial compliance with this article.

(B) A housing element or amendment shall continue to be considered in substantial compliance with this article until either of the following occur:

(i) The department or a court of competent jurisdiction determines that the adopted housing element or amendment is no longer in substantial compliance with this article.

(ii) The end of the applicable housing element cycle.

(C) This paragraph does not constitute a change in, but is declaratory of, existing law.

(3) In any legal proceeding initiated to enforce the provisions of this article, the department's findings made pursuant to this subdivision and subdivision (b) shall create a rebuttable presumption of validity as to whether the adopted element or amendment substantially complies with this article.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Bay Area Planning and Urban Research Association (SPUR) (Sponsor)
California Building Industry Association (Co-Sponsor)
Abundant Housing LA
California Apartment Association
California Building Industry Association
California Chamber of Commerce
California Community Builders
California Hispanic Chambers of Commerce
California Yimby
Circulate San Diego
CivicWell
East Bay Yimby
Fieldstead and Company
Grow the Richmond
Housing Action Coalition
Housing Trust Silicon Valley
How to ADU
LeadingAge California
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
People for Housing Orange County
Progress Noe Valley
San Diego Housing Federation
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY

Santa Rosa YIMBY
Southside Forward
SPUR
Streets for People
Urban Environmentalists
Ventura County YIMBY
YIMBY Action

Opposition

City of Corona
League of California Cities
Livable California

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2023 (Quirk-Silva) – As Amended March 21, 2024

SUBJECT: Housing element: inventory of land: rebuttable presumptions

SUMMARY: Creates a rebuttable presumption of invalidity in any legal action challenging a local government's action or failure to act if the Department of Housing and Community Development (HCD) finds that the action or failure to act does not substantially comply with the local government's adopted housing element or housing element obligations, among other changes. Specifically, **this bill**:

1) Creates a rebuttable presumption of invalidity in any legal action challenging a local government's action or failure to act if HCD finds that the action or failure to act does not substantially comply with the local government's adopted housing element or its housing element obligations.

2) Establishes that in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there is a rebuttable presumption of the invalidity of the housing element or amendment if HCD has found that the element or amendment does not substantially comply with housing element law.

3) Requires, for adoption of the seventh and all subsequent revisions of the housing element, rezonings to be completed no later than one year from the statutory deadline for adoption of the housing element.

4) Notwithstanding 3), for adoption of the seventh and all subsequent revisions of the housing element, requires rezonings to be completed no later than three years after either the date the housing element is adopted or the date that is 90 days after receipt of comments from HCD, whichever is earlier, unless the deadline is extended pursuant to existing law, if the local government complies with all of the following:

    a) The local government submits a draft element or draft amendment to HCD for review at least 90 days before the statutory deadline for adoption of the housing element;

    b) The local government receives from HCD findings that the draft element or draft amendment substantially complies with housing element law on or before the statutory deadline for adoption of the housing element; and

    c) The local government adopts the draft element or draft amendment that HCD found to substantially comply with housing element law no later than 120 days after the statutory deadline.

5) Requires any change to a draft element or draft amendment, made by a legislative body due to a lack of substantial compliance with housing element law, to conform to existing law timelines for public comment, HCD and stakeholder review, and consultation, as specified. Provides that this does not constitute a change in, but is declaratory of, existing law.

6) Provides that the existing law requirement for a planning agency to promptly submit a copy of its housing element or amendment to HCD following adoption shall not be construed to excuse a legislative body from complying with the existing law requirement for the legislative body to take certain actions if HCD finds that the draft element or draft amendment does not substantially comply with housing element law. Provides that this does not constitute a change in, but is declaratory of, existing law.

7) Makes conforming and technical changes.

EXISTING LAW:

1) Requires each city and county to adopt a housing element, which must contain specified information, programs, and objectives, including:

    a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality's existing and projected housing needs for all income levels; an inventory of land suitable and available for residential development; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need, among other things;

    b) A statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and

    c) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element, including actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the local government's share of the regional housing need for each income level that could not be accommodated on sites identified in the sites inventory without rezoning, among other things. (Government Code (GC) Section 65583(a)-(c))

2) Requires a local government's inventory of land suitable for residential development to be used to identify sites throughout the community that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels. Defines "land suitable for residential development" to include:

    a) Vacant sites zoned for residential use;

    b) Vacant sites zoned for nonresidential use that allows residential development;

    c) Residentially zoned sites that are capable of being developed at a higher density, including sites owned or leased by a jurisdiction; and

d) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary and as specified. (GC 65583.2(a))

3) Requires a planning agency to submit a draft housing element revision to HCD at least 90 days prior to adoption of a revision of its housing element pursuant to statutory deadlines, or at least 60 days prior for a draft amendment. Requires the local government to make the first draft revision of the housing element available for public comment for at least 30 days and, if any comments are received, requires the local government to take at least 10 business days after the 30-day public comment period to consider and incorporate public comments into the draft revision prior to submitting it to HCD. For any subsequent draft revision, the local government must post the draft on its website and email a link to all individuals and organizations that have previously requested notices related to the housing element at least seven days before submitting the draft revision to HCD. (GC 65585(b)(1))

4) Requires HCD to review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision or within 60 days of receipt of a subsequent draft amendment or an adopted revision or adopted amendment to a housing element. Prohibits HCD from reviewing the first draft submitted for each housing element revision until the local government has made the draft available for public comment for at least 30 days and, if comments were received, has taken at least 10 business days to consider and incorporate public comments. (GC 65585(b)(3))

5) Requires HCD, in its written findings, to determine whether the draft element or draft amendment substantially complies with housing element law. (GC 65585(d))

6) Requires a local government's legislative body to consider HCD's findings prior to the adoption of its draft element or draft amendment, and provides that if HCD's findings are not available within the time limits specified, the legislative body may act without them. (GC 65585(e))

7) Requires a legislative body to take one of the following actions, if HCD finds that the draft element or draft amendment dos not substantially comply:

   a) Change the draft element or draft amendment to substantially comply; or

   b) Adopt the draft element or draft amendment without changes, in which case the legislative body must include in its resolution of adoption written findings that explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with housing element law despite HCD's findings. (GC 65585(f))

8) Requires the planning agency to submit a copy of an adopted housing element or amendment promptly to HCD following adoption. (GC 65585(g))

9) Requires HCD to review adopted housing elements or amendments and report its findings to the planning agency within 60 days. (GC 65585(h))

10) Requires HCD to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law, including any failure to implement any program actions included in the housing element. Requires HCD to

issue written findings to the local government as to whether the action or failure to act substantially complies with housing element law, and provide a reasonable time no longer than 30 days for the local government to respond to the findings before taking any other action, including revocation of substantial compliance. (GC 65585(i)(1)(A))

11) Authorizes HCD, if it finds that an action or failure to act under 10) does not substantially comply with housing element law, and if it has issued findings that an amendment to the housing element substantially complies with this article, to revoke its findings until it determines that the local government has come into compliance. (GC 65585(i)(2)(B))

12) Requires HCD to notify the local government and authorizes HCD to notify the office of the Attorney General that the local government is in violation of state law if HCD finds that the housing element or an amendment to the element, or any action or failure to act under 10), does not substantially comply with housing element law or that any local government has taken an action in violation of various specified housing laws. (GC 65585(j))

13) Requires local governments on an eight-year housing element cycle with insufficient sites inventories to complete the rezoning of sites, including adoption of minimum density and development standards, no later than three years after either the date the housing element is adopted, as specified, or the date that is 90 days after the receipt of comments from HCD, whichever is earlier, unless the deadline is extended pursuant to existing law. (GC 65583(c)(1)(A))

14) Notwithstanding 13), requires a local government that fails to adopt a housing element that HCD has found to be in substantial compliance with the law within 120 days of the statutory deadline for adoption of the housing element to complete the rezoning of sites no later than one year from the statutory deadline for adoption of the housing element. (GC 65583(c)(1)(A) and GC 65588(e)(4)(C)(i))

15) Establishes a rebuttable presumption of the validity of a housing element or amendment in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, if HCD has found that the element or amendment substantially complies with housing element law. (GC 65589.3)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "California's Housing Element laws were created to ensure all cities and counties are addressing our states housing needs. By establishing equitable standards in the housing review process, we can foster greater adherence to state housing laws, urging even reluctant jurisdictions to fulfill their essential role in addressing our collective housing challenges."

***Timely Adoption and Implementation of Housing Elements*:** One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan for new housing. Such planning is required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most highly populated parts of the state, and five years in areas

with smaller populations. Cities must adopt a legally valid housing element by their statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including exposure to the "builder's remedy" as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or even court receivership. Local governments that do not adopt a compliant housing element within 120 days from their statutory deadline also must complete any rezones within one year of their deadline, rather than the three years afforded to on-time adopters.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element. Depending on whether the jurisdiction met its statutory deadline for housing element adoption, it will have either one year (if it failed to meet the deadline) or three years (if it met the deadline) from its adoption deadline to complete that rezoning program.

It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment locally for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will be slow to build. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and that it not engage in exclusionary zoning practices.

Some jurisdictions, however, do not meet the existing deadline to adopt a legally compliant housing element, or instead adopt a noncompliant draft housing element (rather than one that is legally compliant) in order to attempt to avoid the builder's remedy or remain within the three-year rezoning window. Others may have adopted a compliant housing element within the deadlines, but later take actions that harm the goals and programs in their housing element, or fail to act upon previously committed goals and programs. This bill deals primarily with these noncompliance situations.

Rebuttable Presumption: HCD is the expert agency charged with reviewing local housing elements for compliance with the law and issuing findings as to whether the housing element meets the law's requirements. Once HCD agrees that a local housing element complies with the law, the housing element has a rebuttable presumption of validity in a legal challenge. This means that HCD's finding of compliance receives deference in court and a party challenging the validity of the element has a high bar to meet to prove that HCD was incorrect.

However, the author and sponsors point out there is no comparable provision that establishes a rebuttable presumption of invalidity for a housing element that HCD has found does not meet legal requirements or for an action or failure to act that does not substantially comply with a local government's adopted housing element. Under existing law, a finding of noncompliance by HCD is therefore much easier to ignore or overcome than would be a finding entitled to a legal presumption of noncompliance. The absence of a presumption opens the door for cities to ignore

HCD's expert findings and sidestep HCD's recommendations to strengthen their housing elements and bring them into compliance.

This anomaly in the law is inconsistent with the increasing responsibility and authority delegated to HCD to review and enforce compliance with state housing laws and harms the state's ability to ensure all jurisdictions adopt and implement strong, compliant housing elements. The majority of jurisdictions in California do adopt a housing element that HCD agrees complies with the law, sometimes after significant back and forth with the department. The author and sponsors argue that those that do not should not be held to a lower legal standard than those that do.

Therefore, this bill creates a rebuttable presumption of invalidity for housing elements deemed noncompliant by HCD, raising the standard for jurisdictions to dispute or dismiss HCD's determination of noncompliance. By clarifying that HCD's determination – whether in compliance or not – merits deference from the court, the bill encourages jurisdictions to adopt stronger housing elements that incorporate changes sought by HCD to achieve compliance, and discourages attempts to resort to the courts to challenge HCD's efforts to enforce the obligations of housing element law.

One-Year vs. Three-Year Rezone Allowance: Before 2022, jurisdictions that failed to adopt a housing element within 120 days of the statutory deadline were required to complete their rezoning program no later than three years and 120 days from that statutory deadline. Jurisdictions that had completed and adopted their housing element within appropriate timelines were afforded three years from either the date the housing element was adopted, or from the date that is 90 days after receipt of comments from HCD, whichever was earlier, to complete their rezones.

In 2021, AB 1398 (Bloom), Chapter 358, significantly modified this provision by instead requiring late adopters to complete their rezones no later than one year after their statutory deadline to adopt a housing element. That bill also clarified a local government had to adopt a housing element that HCD had found to be in substantial compliance with housing element law by the 120-day cutoff in order to still be eligible for the three-year rezone window – not simply a housing element in general, which may or may not have been deemed compliant by HCD.

Despite these changes, the sponsors point out some local governments have sought to rush to adopt draft housing elements very close to the 120-day grace period cutoff – before HCD has provided written findings on their draft – in order to stay within the three-year rezone allowance rather than the one-year timeline, with the hope that HCD would deem the draft compliant after the fact. This potentially rewards local governments who are not following the letter of the law with regard to timelines that require submittal of a draft element to HCD at least 90 days before the statutory deadline, and other requirements that a local government's legislative body must consider HCD's findings prior to the adoption of its draft element or draft amendment.

This bill proposes to tighten this provision for the seventh and subsequent cycles by requiring, in order for a local government to stay within the three-year rezone period, the local government to have submitted a draft element to HCD at least 90 days before the statutory deadline for adoption, have received written findings from HCD by the statutory deadline that the draft substantially complies with housing element law, and have adopted the draft no later than 120 days after the statutory deadline. If any of those conditions are not met, the locality would be subject to the one-year rezone timeframe instead.

Arguments in Support: According to the California Rural Legal Assistance Foundation and the Public Interest Law Project, the bill's cosponsor, "[AB 2023] would create a rebuttable presumption of invalidity for housing elements that HCD finds are noncompliant, setting a higher standard for jurisdictions to dispute or disregard HCD's noncompliance determination. This change will bring parity to the system and encourage jurisdictions to adopt and implement stronger housing elements that incorporate changes sought by HCD. It will also discourage attempts by jurisdictions to resort to the courts to challenge HCD's efforts to get them to follow the specific obligations of Housing Element Law. Second, it will require jurisdictions to get HCD sign-off on their draft housing element by the statutory adoption deadline in order to be allowed up to three years to complete rezonings. If they meet this deadline, they will still have the existing 120-day 'grace period' to complete the process of formally adopting the housing element."

Arguments in Opposition: According to Livable California, "…HCD, as an administrative agency of the State, already enjoys a long standing standard of review by a court that makes it very difficult for a court to reverse an HCD decision. It can only be reversed for an abuse of discretion which only occurs when it fails to support its decision by substantial evidence in the light of the whole record. AB 2023 accomplishes nothing other than creating confusion as the proper standard of review for HCD decisions. It should be rejected."

Related Legislation:

AB 1886 (Alvarez) of the current legislative session, among other things, would provide that a housing element or amendment is considered to be substantially compliant with housing element law when the local agency has adopted a housing element or amendment and HCD or a court of competent jurisdiction determines the adopted housing element or amendment to be in substantial compliance, as specified. This bill is currently pending before this committee.

AB 1398 (Bloom), Chapter 358, Statutes of 2021: Requires a local government that has failed to adopt a substantially compliant housing element within 120 days of the statutory deadline to complete a rezoning program no later than one year from the statutory deadline for adoption of the housing element, among other things.

Double Referred: This bill has been double referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation (Sponsor)
Public Interest Law Project (Sponsor)
California Apartment Association
California Housing Partnership Corporation

Opposition

New Livable California Dba Livable California

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2159 (Maienschein) – As Amended April 1, 2024

SUBJECT: Common interest developments: association governance: member election

SUMMARY: Authorizes a homeowners association (HOA) to conduct an election by electronic secret ballot unless the HOA's governing documents provide otherwise, subject to certain conditions. Specifically, **this bill**:

1) Authorizes a HOA to conduct an election by electronic secret ballot unless the governing documents provide otherwise.

2) Defines "electronic secret ballot" to mean a ballot conducted by email or website.

3) Requires an electronic secret ballot to comply with the requirements of the election provisions of the Davis-Stirling Common Interest Development (CID) Act (Act) and the HOA's governing documents.

4) Requires a HOA that conducts an election by electronic secret ballot under this bill to ensure all of the following conditions are satisfied:

    a) Electronic secret ballots must provide each member with all of the following:

        i) A method to authenticate the member's identity to the online voting system;

        ii) For an election of directors, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot; and

        iii) A method to confirm at least 14 days before the voting deadline that the member's electronic device can successfully communicate with the online voting system.

    b) The online voting system utilized by the HOA must have the ability to accomplish all of the following:

        i) Authenticate the member's identity;

        ii) Authenticate the validity of each electronic vote to ensure that the vote is not altered in transit;

        iii) Transmit a receipt from the online voting system to each member who casts an electronic vote;

        iv) For an election of directors, permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to connect an election ballot to a specific member; and

        v) Store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

5) Establishes that, for purposes of determining a quorum, a member voting electronically under this bill must be counted as a member in attendance at the meeting.

6) Prohibits a substantive vote of the members from being taken on any issue other than the issues specifically identified in the electronic vote.

7) Allows an electronic secret ballot to be accompanied by or contained in an electronic individual notice in accordance with specified law.

8) Requires, if an electronic secret ballot is conducted by website, individual notice of the ballot to be delivered to each member and requires the notice to contain instructions on both of the following:

   a) How to obtain access to the website; and

   b) How to vote by electronic secret ballot.

9) Provides that a vote made by electronic secret ballot is effective when it is electronically transmitted to an address, location, or system designated by the inspector or inspectors of elections for this purpose.

10) Prohibits a vote made by electronic secret ballot from being revoked.

11) Provides that a member's consent to vote by electronic secret ballot remains valid until the member opts out in accordance with the procedures established by the board.

12) Prohibits a HOA from using an electronic secret ballot unless the HOA establishes procedures that provide an opportunity for members to vote by written secret ballot.

EXISTING LAW:

1) Requires, notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area to be held by secret ballot in accordance with the procedures set forth in specified law. (Civil Code (CC) Section 5100(a))

2) Applies the provisions of the Act to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents. Provides that in the event of a conflict between the Act and the provisions of the Nonprofit Mutual Benefit Corporation Law relating to elections, the provisions of the Act prevail. (CC 5100(c) and (e))

3) Requires a HOA to adopt operating rules in accordance with specified law that do the following, among other requirements:

   a) Specify the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents;

b) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods:

i) Appointment of the inspector or inspectors by the board;

ii) Election of the inspector or inspectors by members of the HOA; or

iii) Any other method for selecting the inspector or inspectors.

c) Allow the inspector or inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided the persons are independent third parties who meet specified requirements; and

d) Require retention of, as HOA election materials, both a candidate registration list and a voter list, which must include the name, voting power, and physical address or parcel number of the voter's separate interest. The HOA must permit members to verify the accuracy of their individual information on both lists at least 30 days before ballots are distributed, and an HOA or member must report any errors or omissions to the inspector, who must make the corrections within two business days. (CC 5105(a))

4) Requires a HOA's operating rules for elections to do all of the following:

a) Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed;

b) Prohibit the denial of a ballot to a person with general power of attorney for a member;

c) Require the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner; and

d) Require the inspector of elections to deliver or cause to be delivered to each member the ballot or ballots and a copy of the election operating rules at least 30 days before an election. (CC 5105(h))

5) Requires a HOA to select one or three independent third party or parties as an inspector of elections. An independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or candidate for director or be related to a director or candidate for director, nor may they be a person or business entity currently employed or under contract to the HOA for any compensable services other than serving as an inspector of elections. (CC 5110(a)-(b))

6) Requires the inspector of elections to do all of the following:

a) Determine the number of memberships entitled to the vote and the voting power of each;

b) Determine the authenticity, validity, and effect of proxies, if any;

c) Receive ballots;

d) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;

e) Count and tabulate all votes;

f) Determine when the polls close, consistent with governing documents;

g) Determine the tabulated results of the election; and

h) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with the Act, the Corporations Code, and all applicable rules of the HOA regarding the conduct of the election that are not in conflict with the Act. (CC 5110(c))

7) Requires a HOA to provide general notice for elections of directors and recall elections of all of the following at least 30 days before the ballots are distributed:

a) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections;

b) The date, time, and location of the meeting at which a quorum will be determined, if the HOA's governing documents require a quorum, and at which ballots will be counted;

c) The list of all candidates' names that will appear on the ballot;

d) If individual notice is requested by a member, deliver such notice pursuant to existing law; and

e) If the HOA's governing documents require a quorum for election of directors, a statement that the board may call a subsequent meeting at least 20 days after a scheduled election if the required quorum is not reached, at which time the quorum of the membership to elect directors will be 20% of the HOA's members voting in person, by proxy, or by secret ballot. (CC 5115(b))

8) Requires a HOA to mail by first-class mail or deliver ballots and two preaddressed envelopes with instructions on how to return the ballots to every member not less than 30 days prior to the deadline for voting. Requires ballots to be double-enveloped, as specified. (CC 5115(c))

9) Authorizes an election to be conducted entirely by mail unless otherwise specified in the governing documents, except for the meeting to count the votes. (CC 5115(f))

10) Requires all votes to be counted and tabulated by the inspector or inspectors of elections, or their designee, in public at a properly noticed open meeting of the board or members. Prohibits a person, including a member or an employee of the management company, from opening or otherwise reviewing any ballot prior to the time and place at which the ballots are counted and tabulated. Requires the tabulated results of the election to be promptly reported to the board and be recorded in the minutes of the next meeting of the board, and to be available for review by members. Requires the board to give general notice, as specified, of the tabulated results of the election within 15 days of the election. (CC 5120)

11) Requires the sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list at all times to be in the custody of the inspector of elections or at a location designated by the inspector until after the tabulation of the vote, and until the time allowed by existing law for challenging the election has expired, at which time the custody must be transferred to the HOA. (CC 5125)

12) Requires the inspector, if there is a recount or other challenge to the election process, to make the ballots available for inspection and review upon written request by a member or their authorized representative. Requires any recount to be conducted in a manner that preserves the confidentiality of the vote. (CC 5125)

13) Prohibits a board from imposing regular assessments over 20% higher than the preceding year's regular assessment, or imposing special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the HOA for that fiscal year, without the approval of a majority of a quorum of the members at a member meeting or election. (CC 5605(b))

14) Authorizes a corporation, a nonprofit corporation, a nonprofit mutual benefit corporation, a nonprofit religious corporation, and a cooperative corporation to conduct a shareholder meeting in whole or in part through remote electronic means provided that the corporation implements specified measures to provide shareholders and proxyholders a reasonable opportunity to participate and vote on matters considered at the meeting, and one of specified conditions is met. (Corporations Code Sections 600, 5510, 7510, 9411, 12460)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Assembly Bill [2159] would authorize a common interest development (CID) or homeowner association (HOA) to conduct elections by using electronic voting systems. The Davis-Stirling Act establishes the rules and regulations governing the operation of a CID/HOA and the respective rights and duties of the association and its members. Associations use elections to choose members to serve on an association's board of directors, make changes to governing documents, like bylaws, and levy assessments for specific purposes. Under existing law, homeowners' associations conduct elections through a paper and mail-based balloting system that resembles California's vote-by-mail process. 27 states have adopted statutes allowing associations to use electronic balloting systems. These systems have been developed over time and have been proven efficient and effective in conducting elections. Associations have difficulty under the existing balloting system establishing the quorum required by their governing documents. The legislature and Governor provided some relief from this situation with the passage of AB 1458 (Ta). However, the cost of the current vote by mail is significant for most associations. And, if a quorum is not reached, even under the reduced quorum opportunity provided by AB 1458, the election must be repeated. The costs of this process are born by the homeowners through monthly assessments. Since the pandemic, many associations have utilized videoconferencing for meetings, electronic notification of activities, and other technologies to increase participation. The availability of electronic voting is just one more tool that could help increase participation."

Background on CIDs: CIDs are a type of housing with separate ownership of housing units that also share common areas and amenities. There are a variety of different types of CIDs, including condominium complexes, planned unit developments, and resident-owned mobilehome parks. In

recent years CIDs have represented a growing share of California's housing stock. Data from 2019 indicates that there are an estimated 54,065 CIDs in the state that are made up of 5 million housing units, or about 35% of the state's total housing stock.

CIDs are regulated under the Davis-Stirling Act (Civil Code Section 4000 *et seq*.) as well as the governing documents of the HOA, including the bylaws, declaration, and operating rules. CIDs can also have Covenants, Conditions, and Restrictions (CC&Rs) which are filed with the county and recorded at the time they are established. Owners in a CID are contractually obligated to abide by the CC&Rs and the governing documents of a CID, which specify rules such as parking policies, allowable modifications to homes, and rental restrictions. Additionally, HOAs are governed by a board of directors elected by the membership in elections that closely resemble California's vote-by-mail process. In addition, many associations use a managing agent to assist with finances, logistics, and other services provided to homeowners.

HOA boards have a number of duties and powers. The board determines the annual assessments that members must pay in order to cover communal expenses. The board enforces the community rules and can propose as well as make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members and, if necessary, the power to foreclose upon the offending member's property. This combination of responsibilities and authority has led multiple courts to observe that HOAs function in many ways almost "as a second municipal government, regulating many aspects of [the homeowners'] daily lives." (*Villa Milano Homeowners Ass'n v. Il* Davorge (2000) 84 Cal.App.4th 819, 836)

***Election Procedures*:** HOAs are required to hold elections for board directors when a seat becomes vacant and at least every four years, and must hold elections when voting on amendments to certain governing documents and levying of some large regular and special assessments. The Davis-Stirling Act requires HOA elections to conform to certain procedures, including double-stuffed ballots and the selection of at least one independent third party inspector of elections. Voting for board members is the fundamental way a homeowner in a CID can advocate to have their interests represented in the HOA's governance. Recent legislative actions related to HOA election rules have addressed qualifications for nominees to the board, challenges with finding enough members who are willing to run for the board, procedures for election by acclamation, and reducing quorum thresholds when not enough members participate in the vote.

Electronic Voting: Electronic voting is available only in extremely limited circumstances in a small handful of states for traditional government elections, usually for individuals with disabilities, residents living abroad, or overseas military voters who do not have access to in-person or mailed ballots.[1] Concerns about the security of electronic voting and the vulnerability of specific online systems to hacking have prevented this technology from being widely adopted. However, 27 states have permitted HOAs to utilize electronic voting for a variety of purposes. In addition, for-profit, nonprofit, and cooperative corporations in California and in many states may hold member meetings and shareholder or member votes electronically or in hybrid settings under procedures specified in various sections of the Corporations Code. HOAs are often organized as nonprofit corporations.

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[1] https://stateline.org/2021/02/17/despite-security-concerns-online-voting-advances/

This bill would authorize HOAs in California to choose to hold votes by electronic secret ballot, so long as the voting system meets specific security and accessibility requirements. Additionally, a HOA board choosing to utilize electronic voting under this bill would have to provide notices to members of the instructions for how to cast their vote electronically and specify its election procedures for how any member who wishes to continue voting with a paper ballot can opt out of the electronic process. If a HOA's governing documents prohibit electronic voting, or are subsequently amended to prohibit electronic voting, then the HOA would be prohibited from offering electronic voting.

The committee may wish to consider whether it is appropriate to allow electronic voting on matters relating to assessments, as the assessments that legally must go to a vote of the membership are either 20% higher than the preceding year's regular assessment or more than 5% of the budgeted gross expenses of the HOA for that fiscal year. This means they are likely to be large assessment increases that may not be appropriate for opening up to a new method of voting as proposed by this bill.

Arguments in Support: According to the Community Associations Institute's California Legislative Action Committee (CAI-CLAC), the bill's sponsor, "While vote-by-mail is an appropriate tool for voting, the cost of this process is significant for most associations. And, if quorum is not achieved, even under the reduced quorum standards recently authorized by legislation, the election must be repeated. This cost is born by homeowners through monthly assessments. Currently, many associations have adapted to use videoconferencing for meetings, electronic notification, and other technologies. These technologies have been shown to increase participation. Electronic voting, which is currently authorized in 27 other states, is another tool that could help increase access. CAI-CLAC supports AB 2159 which would authorize associations to use electronic balloting systems, which have been developed over time and have been proven efficient and effective in conducting elections."

Arguments in Opposition: According to the California Alliance for Retired Americans, "Electronic voting dispenses with paper ballots – along with the chain of custody, that is, with a verifiable physical record of who handled the ballots, in what manner, how often, and when. Both ballots and chain of custody are essential to verifying election results. Paper ballots were at the heart of the election dispute debated by the U.S. Supreme Court in Bush v. Gore, 531 U.S. 98 (2000). A paper ballot is the only durable record of the voter's intention and the only one that can be examined by the voter, by the Inspector of Elections, and by the courts. Electronic data (aka 'votes') can be altered, corrupted in a file, or irretrievably lost. Homeowners cannot 'witness' the physical tabulation of an electronic ballot. Numerous studies have been conducted on the risks inherent in electronic voting, including a comprehensive 'top to bottom' analysis commissioned by the California Secretary of State's office. The study concluded that there was no way to protect the ballots of voters when they were cast electronically. For these reasons, CARA must respectfully oppose AB 2159."

Committee Amendments: Staff recommends the bill be amended as follows:

- Prohibit HOAs from using electronic voting for elections where the association is proposing levying a regular or special assessment by adding a new subsection to Civil Code Section 5116:

5116. ***(l) The association shall not use an electronic secret ballot for levying regular or special assessments, as provided for in Chapter 8.***

- Modify existing rules in Civil Code Section 5115 governing how HOAs must provide notice to members of upcoming elections and procedures for returning ballots to include the possibility of electronic balloting as proposed by the bill in those notices:

5115.(b) For elections of directors and for recall elections, an association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

(1) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections***, and, if an association chooses to conduct an election by electronic secret ballot as provided for in Section 5116, the election procedures pursuant to that section, whether the ballot will be conducted by email or internet website, as specified, and instructions on how to vote by electronic secret ballot***.

- Clarify that existing rules regarding all members being provided ballots and two preaddressed envelopes do not preclude a HOA from using electronic voting if it so chooses, and that only members who opt out of electronic voting in an instance of an electronic vote must be provided ballots and envelopes in Civil Code Section 5115:

5115.(c) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting***, unless an association chooses to conduct an election by electronic secret ballot as provided for in Section 5116, in which case only members who have opted out of electronic secret ballot and instead opted to vote by written secret ballot under the procedures specified in paragraph (h) and (j) of Section 5116 shall be mailed or delivered the ballots and envelopes***. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:

(1) The ballot itself is not signed by the voter, but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.

(2) The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.

Related Legislation:

AB 2460 (Ta) of the current legislative session would make changes to the lower quorum requirement authorized for HOA elections of directors under specified circumstances. This bill is currently pending before this committee.

AB 1458 (Ta), Chapter 303, Statutes of 2023: Authorizes a lower quorum requirement for CID association elections of directors under specified circumstances.

Double Referred: This bill was also referred to the Assembly Committee on Judiciary, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Community Associations Institute - California Legislative Action Committee (Sponsor)
Condominium Financial Management
Flanagan Law
One Woman No Cry
Walters Management

Opposition

California Alliance for Retired Americans
Center for Homeowner Association Law
Verified Voting
Individual – 1

Oppose Unless Amended

Pro Elections

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2240 (Arambula) – As Introduced February 8, 2024

SUBJECT: Farm labor centers: migratory agricultural workers

SUMMARY: Prohibits a housing authority operating a farm worker labor center with a contract with the Department of Housing and Community Development (HCD) entered into, amended, or extended, after January 1, 2025 to limit the period of occupancy of housing, unless approved by the department. Specifically, **this bill**:

1) Defines "migratory agricultural worker" or "migratory farmworker" to mean a person who meets both of the following conditions:

    a) Has either of the following employment statuses:

        i) During the current or preceding calendar year, derived at least 50% of their total annual household earned income from agricultural employment; or

        ii) Can produce current evidence of a current job offer in agricultural employment.

    b) Performs, has performed, or will perform agricultural labor during the current or preceding calendar year under conditions that require round-trip travel exceeding 100 miles per day, such that they were unable to return to their chosen place of residence within the same day of labor.

    c) Provides that this definition applies to a contract with an Office of Migrant Services (OMS) provider entered into, amended, or extended on and after January 1, 2025.

2) Prohibits a housing authority operating a farm worker labor center with a contract with HCD entered into, amended, or extended, after January 1, 2025 to limit the period of occupancy of housing units for agricultural units, unless approved by the department.

EXISTING LAW:

1) Defines a "migratory agricultural worker" to mean an individual who:

    a) During the current or preceding calendar year, derived at least 50% of their total annual household earned income from agricultural employment or can produce current evidence of a current job offer in agricultural employment; and

    b) Performs, has performed, or will perform such agricultural labor during the current or preceding calendar year under conditions which require round trip travel exceeding 100 miles per day such that they were unable to return to their chosen place of residence within the same day of labor; and

c) Has resided together with their immediate family outside a 50 mile radius of the migrant center for at least 3 months out of the preceding 6 month period. (OMS Regulations)

2) Defines a "farm labor center" to mean any farm labor center (or any part thereof) owned or acquired by a housing authority in the State. (Health and Safety Code (HSC) Section 36055)

3) Requires a housing authority to admit to occupancy in a farm labor center only single persons and families whose principal source of income is derived from agricultural work without regard to whether or not they have low incomes. "Agricultural work" means work performed on a farm or in the handling, packing, processing, freezing, canning, or shipping of agricultural produce of the immediate area. (HSC 36062)

4) Prohibits a housing authority operating a farm labor center to limit occupancy of units for agricultural workers to less than 270 days if the Director of Agriculture certifies that there are seasonal crops that would keep such workers in the immediate area for such period of time. (HSC 36069)

5) Allows a migrant farm labor center to operate for an extended period prior to or beyond the standard 180-day period after approval by HCD, provided that all of the following conditions are satisfied:

a) No additional subsidies provided by HCD are used for the operation or administration of the migrant farm center during the extended occupancy period, except to the extent that state funds are appropriated or authorized for the purpose of funding all or part of the cost of subsidizing extended occupancy periods;

b) Rents are not to be increased above the rents charged during the standard 180-day occupancy period unless HCD finds that an increase is necessary to cover the difference between reasonable operating costs necessary to keep the center open during the extended occupancy period and the amount of state funds available pursuant to paragraph 1) and any contributions from agricultural employers or other federal, local, or private sources. These contributions shall not be used to reduce the amount of state funds that otherwise would be made available to the center to subsidize rents during an extended occupancy period; and

c) In no event shall the rent during the extended occupancy period exceed the average daily operating cost of the center, less any subsidy funds available pursuant to paragraph a) or b). With respect to an extended occupancy beyond the standard 180-day period, households representing at least 25% of the units in the center shall have indicated their desire and intention to remain in residency by signing a petition to the local entity to keep the center open for an extended period at rents that are the same or higher than rents during the regular period of occupancy. Each household shall receive a clear bilingual notice describing the extended occupancy options attached to the lease. (HSC 50710.1)

6) Requires HCD, prior to approving or denying an early opening or an extension of occupancy of a migrant farm labor center or an extension and establishing the rents for the extended occupancy period, to take into consideration all of the following factors:

a) The structural and physical condition of the center, including water and sewer pond capacity and the capacity and willingness of the local entity to operate the center during the extended occupancy period;

b) Whether local approvals are required, and whether there are competing demands for the use of the center's facilities;

c) Whether there is adequate documentation that there is a need for residents of the migrant center to continue work in the area, as confirmed by the local entity;

d) The climate during the extended occupancy period;

e) The amount of subsidy funds available that can be allocated to each center to subsidize rents below the operating costs and the cost of operating each center during the extended occupancy period;

f) The extended occupancy period is deemed necessary for the health and safety of the migrant farmworkers and their families; and

g) Other relevant factors affecting the migrant farmworkers and their families and the operation of the centers. (HSC 36069)

7) Provides that the standard occupancy period combined with any extended occupancy period for a migrant farm center shall not exceed a cumulative operating period of 275 days in any calendar year. (HSC 36069)

8) Requires HCD, no later than January 1, 2026, to develop a comprehensive strategy to substantially improve policy, funding, and implementation of farmworker housing production in California to adequately address the size and scope of the problems identified in the study, including amendments to the California Statewide Housing Plan. (HSC 50408.5)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Farmworkers should be treated with dignity and respect reflective of the essential contribution they make to California's agricultural economy and local communities. AB 2240 ensures that farmworkers and their families are not separated because of outdated policies and that their children's education is not interrupted.

Before modern migratory farmworker housing centers were established, many lived in overcrowded, substandard motel rooms, makeshift shacks, or near orchards and streams without plumbing or safety. In response, in 1965 California provided migrant farmworkers and their families with affordable, seasonal rental housing from April to November.

Today, however, the majority of farmworkers are no longer migratory single men but instead are settled with families. Despite this change, farmworkers still must reside outside of a 50-mile radius of a center for a minimum of three months in order to qualify for migratory farmworker

housing. This is devastating to children whose school years do not align with these closures and to families who are required to separate as a condition of residency."

OMS: Since the 1960s, HCD has administered OMS to provide affordable housing to migrant farmworkers. HCD owns farmworker labor centers and contracts with local housing authorities and counties to operate the centers. Counties, housing authorities, and grower associations typically provide land for centers as an in-kind contribution. Child daycare and after-school support services are often available. Tenants are charged a subsidized, affordable daily rent. HCD contracts annually with local operating agencies and provides grants for OMS center operation, paid from the state General Fund and from OMS rental income. There are currently 24 migrant farm labor centers that operate in 15 counties in California that typically house approximately 7,000 farmworkers a year.

Historically, occupancy of OMS centers has been limited to six months, generally between May/April to October/November to accommodate migrant workers who have travelled to California for the growing season and then returned to their country of origin. To live there, individuals must meet an income requirement, prove they work in agriculture and live at least 50 miles away for three months after the season ends. However, that policy has been changed by the Legislature over the last few years.

In response to concerns that school-aged children living in migrant centers were not able to complete the school year because of the 50-mile rule, SB 850 (Committee on Budget), Chapter 48, Statues of 2018, allowed migratory agricultural workers with school-aged children to reside within a 50-mile radius of a migrant farm labor center on a year-round basis. Up to 50% of the units in a migrant farm labor centers could be made available to these families. The remaining units were reserved for migratory agricultural workers who require round-trip travel exceeding 100 miles per day, which results in the migratory agricultural worker being unable to return to the workers' chosen place of residence within the same day of labor. The exemption to the 50-mile year sunset on January 1, 2024. This bill would eliminate the requirement that a migratory farmworker live 50 miles away from the farmworker center at least three months out of the year.

Under the current standard OMS centers remain open for 180 days out of the year, with the option to stay open 270 days with approval from HCD. This bill would eliminate the option for a farmworker center to limit occupancy of units for agricultural workers to less than 270 days. As a result, units in a center could be provided year round to farmworkers and their families. There is not a requirement for centers to set-aside any units for farmworkers who may choose to live temporarily in a farmworker center and travel back to their country to origin for part of the year.

Farmworkers: According to investigative reporting completed by the Sacramento Bee, the number of migrant California farmworkers has decreased significantly over time. U.S. Department of Labor data shows about 92% of California farmworkers were settled in the state from 2019-2020. The Sacramento Bee interviewed farmworkers living in centers and found that more than 80% of the farmworkers surveyed said they would stay if their units were available year-round. Only 8% of California's farmworkers were migrants in fiscal years 2019 and 2020, according to the U.S. Department of Labor.

The state lacks enough affordable housing for farmworkers and their families. AB 1654 (R. Rivas), Chapter 638, Statutes of 2022, requires the state to complete a statewide study of

farmworker housing conditions, needs, and solutions to inform a comprehensive strategy for meeting the housing needs of the state's farmworkers. This includes an analysis of the needs of migrant farmworkers. The strategy is due by January 1, 2026.

Although the number of farmworkers who migrate each year for the growing season has declined, housing is still necessary for those workers. As drafted, this bill would fundamentally change the OMS centers to be permanent housing, eliminating the requirement for a farmworker to establish they are migrating each year. While there is a need for more affordable housing for farmworkers and their families who permanently reside in the state, there is also a need for housing for migrant farmworkers. This bill does not set a policy as to how the OMS centers will accommodate the needs of migrant farmworkers. The committee may wish to consider if this should be incorporated in the design of this program.

Arguments in Support: According to the sponsor, the Food Empowerment Program, "over the years, farm worker demographics have shifted. The majority of farm workers are no longer migratory single men but rather are settled with families. In 2020 only 8 percent of the state's farmworker population identified as migrants. As more families establish themselves generationally and contribute to the communities in which they reside, migratory farm worker housing programs must evolve to serve this new paradigm."

Arguments in Opposition: None on file.

Related Legislation:

AB 1654 (R. Rivas), Chapter 638, Statutes of 2022: Requires HCD to commission a statewide study on the lack of affordable and accessible farmworker housing. HCD will contract with trusted messengers (such as local non-profits) in farmworker communities to conduct this study. HCD will then use that analysis of the barriers, unmet needs, existing housing conditions, and trends in agricultural employment statewide and regionally to improve policy and potentially increase funding for farmworker housing production.

SB 850 (Committee on Budget), Chapter 48, Statues of 2018: Allows immediate family members of a migratory agricultural worker to reside within a 50-mile radius of a migrant farm labor center on a year-round basis. Codifies the definition of a migrant farmworker, and upon approval by HCD and until January 1, 2024, allows operators of migrant farm labor centers to provide up to 50 percent of the units in a labor center to be available for non-migrant agricultural workers provided they have school-age children enrolled in the local school district. Requires annual reporting from operators of migrant farmworker housing centers on demographic data for both migrant and non-migrant agricultural workers in the facility.

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Farmworker Families (Sponsor)
Food Empowerment Project (Sponsor)
Human Agenda (Sponsor)
Sacramento State Center on Race, Immigration, and Social Justice (Sponsor)
Alianza
County of Yolo

Lideres Campesinas
Madera Coalition for Community Justice
Puente De LA Costa Sur
San Joaquin County Office of Education Migrant Education
San Joaquin Delta College Chicanx Latine Faculty Taskforce
San Joaquin Delta College Teachers Association
San Jose Peace and Justice Center
The Diversity Matters Club from Valley Christian High School
Individuals - 19

Opposition

None on file.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2353 (Ward) – As Introduced February 12, 2024

SUBJECT: Property taxation: welfare exemption: delinquent payments: interest and penalties

SUMMARY: Creates a process for a developer building affordable rental housing that qualifies for the property tax welfare exemption to withhold property taxes, without penalty, while the county tax assessor determines if the development qualifies for the welfare exemption. Specifically, **this bill**:

1) Provides that a taxpayer is not liable for interest or penalties imposed by a county tax collector, nor shall a county tax collector attempt to collect delinquent property taxes levied on a property, if the taxpayer has submitted an application to exempt the property from property taxes under the existing property tax exemption for deed-restricted affordable lower income rental housing.

2) Requires the application for exemption to include the following:

    a) The appropriate clearance certificate or supplemental clearance certificate from the State Board of Equalization (BOE);

    b) A description of the property that includes the total number of residential units, the number of residential units eligible for exemption, the total square footage of the improvements, and the square footage of improvements not eligible for exemption; and

    c) An enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document consistent with the requirements of the property tax welfare exemption.

3) Provides that the process created by this bill does not apply to either of the following:

    a) The prorated portion of any delinquent installments of property taxes that are related to improvements ineligible for exemption or to residential units not restricted as affordable to lower income households pursuant to the agreement, restriction, or document; or

    b) Any late or delinquent installments related to property which the assessor deems ineligible for exemption after reviewing the application for property tax welfare exemption.

4) Requires the county assessor to acknowledge to the taxpayer and the county tax collector receipt of the application for exemption within 60 days of the taxpayer's submittal of the application.

5) Provides that any routine communication sent to the taxpayer from the tax collector shall not constitute a collection action under this bill.

6) Provides that 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.

EXISTING LAW:

1) Authorizes the Legislature to exempt from taxation property used exclusively for religious, hospital, or charitable purposes, as specified. (California Constitution Article XIII, Section 4(b).) The Legislature has implemented this "welfare exemption" in Revenue and Taxation Code (R&TC) Section 214.

2) Exempts from taxation low-income housing developments operated by non-profit organizations, as specified. (R&TC Section 214(g).)

3) Provides that qualifying rental housing properties are entitled to a partial exemption, equal to that percentage of the property's value that is equal to the percentage that the number of units serving "lower income households" represents of the total number of residential units. The exemption applies in any year in which any of certain criteria apply, including that the owner is eligible for and receives low-income housing tax credits (LIHTCs) under Internal Revenue Code (IRC) Section 42.

4) Defines "lower income households" by reference to Health and Safety Code (H&SC) Section 50079.5. H&SC Section 50079.5, in turn, defines the term as persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time under Section 8 of the United States Housing Act of 1937. In the event the federal standards are discontinued, the Department of Housing and Community Development (HCD) must, by regulation, establish income limits for lower income households for all geographic areas of the state at 80% of area median income (AMI), adjusted for family size and revised annually.

5) Authorizes an exemption from taxation property used exclusively for religious, hospital, or charitable purposes when buildings are under construction. (California Constitution Article XIII, Section 5)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, AB 2353 would reduce the cost of developing affordable housing by allowing non-profit affordable housing developers to withhold relevant tax payments, without penalty, while their welfare exemption applications are under review. To be eligible, a property must be subject to a recorded affordability covenant and the developer must have received a clearance certificate from the BOE, indicating they are eligible for the exemption.

Property Tax Welfare Exemption: Article XIII, Section 4(b) of the California Constitution authorizes the Legislature to exempt property used exclusively for religious, hospital, or charitable purposes, as specified, from taxation. The Legislature has implemented this "welfare exemption" in R&TC Section 214.

AB 2144 (Filante), Statutes of 1989 amended R&TC Section 214 to specifically exempt low-income housing developments operated by non-profit organizations. As noted in the Senate Revenue and Taxation Committee analysis, AB 2144's proponents argued that the property tax funds then being paid "could better be used in furtherance of the goals of providing low income housing." Generally, to qualify for the welfare exemption, the law requires that the rental housing be financed with specified tax-exempt bonds, government loans, or grants, or that the property's owner receives LIHTC under IRC Section 42. The welfare exemption extends to "units serving lower income households." To qualify, the unit must be occupied by a lower income household (a household with a maximum income of 80% of AMI). To receive the welfare exemption, a property owner must certify that the property tax savings is necessary to maintain the affordability of the units occupied by lower income households.

To qualify for the property tax welfare exemption, a developer must submit an application to the county assessor. While the application is being approved, a developer pays property taxes and must seek reimbursement after both the BOE and county assessor approves the property tax exemption. County assessors have existing authority to cancel any penalty, costs, or other charges resulting from tax delinquency, in particular if a taxpayer is ordered to "shelter in place" as a result of a natural disaster. This bill is modeled after this existing statutory authority. A developer would not be required to pay property taxes while waiting for approval of the property tax exemption if they have recorded an affordability covenant, received appropriate clearance certificate or supplemental clearance certificate from the BOE, and include in its application the total square footage and the number of units the development will include.

Arguments in Support: According to the sponsor of this bill, the California Housing Partnership, "even though most affordable housing developers have been approved for exemptions numerous times and the use of a particular site as affordable housing and the percentage of affordable units on that site are set in recorded affordability restrictions, developers must pay the taxes up front and seek reimbursement after both the Board of Equalization (BOE) and the county assessor approve a development's exemption. As a result, developers float hundreds of thousands of dollars in tax payments for as much as three years, only to get the money back (albeit without interest) once their application is approved. The developers pay interest to borrow this money, which further increases development costs."

Arguments in Opposition: None on file.

Related Legislation:

AB 84 (Ward), Chapter 734, Statutes of 2023: As heard in the Assembly Committee on Housing and Community Development, would have created an expanded the property tax welfare exemption to include vacant land and buildings under construction. This provision was later removed from the bill. The final version of the bill expanded the welfare exemption by authorizing 501(c)(3) bonds as an eligible form of financing, and permits, for five years, a unit in a development that is not financed with low-income housing tax credits (LIHTCs) to remain eligible if the tenant's income rises to no more than 100% of the area median income (AMI).

Double Referred: This bill was also referred to the Assembly Committee on Revenue and Taxation, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Partnership Corporation (Sponsor)
California State Controller Malia M. Cohen
East Bay Housing Organizations
Housing Authority of the City of San Buenaventura
Housing California
LeadingAge California
Many Mansions
Nonprofit Housing Association of Northern California
Resources for Community Development
Southern California Association of Non-profit Housing

Opposition

None on file.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2361 (Davies) – As Introduced February 12, 2024

SUBJECT: Planning and zoning: regional housing needs: exchange of allocation: Counties of Orange and San Diego

SUMMARY: Allows a city or county in the counties of Orange and San Diego to transfer all or a portion of its regional housing needs allocation (RHNA) to another city or county in the counties of Orange and San Diego. Specifically, **this bill**:

1) Allows, notwithstanding any other law, a city or county to transfer all or a portion of its RHNA to a transferee city or county, by agreement.

2) Allows a transferring city or county to pay a transferee city or county an amount determined under the agreement, and allows the payment of a surcharge to offset the impacts and associated costs of the additional housing on the transferee city.

3) Requires, upon an agreement to transfer all or a portion of the RHNA under this bill, the transferring and transferee localities to report to the appropriate council of governments (COG), or, for localities without a COG, the Department of Housing and Community Development, as to the number of housing units transferred, any amount paid by the transferring locality, and any other terms of the agreement.

4) Requires the transferring and transferee locality to include the information in 3) in the Annual Progress Report (APR), as specified.

5) Defines "transferee city or county" to mean a city or county that accepts a transfer of all or a portion of the RHNA from a transferring city or county under this bill.

6) Defines "transferring city or county" to mean a city or county that transfers all or a portion of its RHNA to a transferee city or county under this bill.

EXISTING LAW:

1) Provides that each community's fair share of housing be determined through the RHNA process. Sets out the allocation process as follows: (a) the Department of Finance and HCD develop regional housing needs estimates; (b) COGs allocate housing within each region based on these determinations, and where a COG does not exist, HCD conducts the allocations; and (c) cities and counties incorporate these allocations into their housing elements. (Government Code (GC) Section 65584 and 65584.01)

2) Requires the RHNA plan to further all of the following objectives:

    a) Increasing the housing supply and mix of housing types, tenure, and affordability in all cities and counties within the regional in an equitable manner, which must result in each jurisdiction receiving an allocation of units for low- and very low-income households;

b) Promoting infill development, socioeconomic equity, protection of environmental and agricultural resources, encouragement of efficient development patterns, and achievement of regional climate change reduction targets;

c) Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction;

d) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category; and

e) Affirmatively furthering fair housing. (GC 65584(d))

3) Allows at least two or more cities and a county or counties to form a subregional entity for the purpose of allocation of the subregion's existing and projected need for housing among its members. Requires the COG to determine the share of RHNA assigned to each delegate subregion, and requires each subregion to fully allocate its share of the RHNA to local governments within its subregion. (GC 65584.03)

4) Requires, during the COG allocation process, each COG and subregion to distribute a draft allocation of the RHNA that includes the allocation methodology to each local government or subregion as well as HCD. Within 45 days following receipt of the draft allocation, a local government, subregion, or HCD may file an appeal to the COG or subregion for a revision of the share of RHNA proposed to be allocated to one or more local governments. No later than 45 days after a public hearing on the appeals, the COG or subregion must make a final determination on the merits of each appeal and issue a proposed final allocation plan. (GC 65584.04 and 65584.05)

5) Permits, during the period between adoption of a final RHNA and the due date of the housing element update, a COG, subregion, or HCD to reduce the share of regional housing needs of a county if all of the following conditions are met:

a) One or more cities within the county agree to increase its share or their shares in an amount equivalent to the reduction;

b) The transfer of shares must occur only between a county and cities within that county;

c) The county's share of low-income and very low-income housing must be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced; and

d) The entity that assigned the county's share must approve the proposed reduction if 5)a)-c) above are satisfied, and the county and cities proposing the transfer must submit an analysis of the factors and circumstances, with supporting data, justifying the revision to the COG, subregion, or HCD. (GC 65584.07)

6) Requires each jurisdiction to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must identify and analyze existing and projected housing needs, including the jurisdiction's share of the RHNA;

identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community; and demonstrate local efforts to remove governmental and nongovernmental constraints that hinder the jurisdiction from meeting its share of the regional housing need, among other requirements. (GC 65583)

7) Requires each jurisdiction to submit an APR to its legislative body, HCD, and the Office of Planning and Research (OPR) by April 1 of each year that includes specified information, including progress in meeting its share of RHNA, a list of sites rezoned to accommodate the RHNA allocation for each income level that could not be accommodated on sites identified in the housing element's sites inventory, and the number of net new units of housing that have been issued a completed entitlement, building permit, or certificate of occupancy and the income category that each unit satisfied. (GC 65400)

FISCAL EFFECT: None.

COMMENTS:

Author's Statement: According to the author, "California is at a cross-roads when it comes to our affordable housing crisis. Our state should be pioneering new solutions to address the lack of housing available to our residents. One way to do this is allow our cities the flexibility to work with other localities around them when it comes to our Regional Housing Needs Assessment (RHNA) numbers. AB 2361 is a common-sense measure to allow the counties of Orange and San Diego the opportunity to engage in a pilot program to allow cities to exchange RHNA numbers to see if they can then fulfil their housing quotas. The status quo isn't working and this measure represents a chance to change direction and try something new."

California's Housing Crisis: California is in the midst of a severe housing crisis. Over two-thirds of low-income renters are paying more than 30% of their income toward housing, a "rent burden" that means they have to sacrifice other essentials such as food, transportation, and health care.[1] In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became homeless for the first time.[2] The crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership's (CHP) Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 687,000 available and affordable rental units in the state. Over three-quarters of the state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50% of their income toward rent each month. CHP estimates that the state needs an additional 1.3 million housing units affordable to very low-income Californians to eliminate the shortfall.[3] By contrast, production in the past decade has been under 100,000 housing units per year – including less than 10,000 units of affordable housing per year.[4]

***Adoption and Implementation of Housing Elements*:** One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan

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[1] https://chpc.net/housingneeds/
[2] https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] https://chpc.net/housingneeds/
[4] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml

for new housing. Such planning is required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most of the high population parts of the state, and five years in areas with smaller populations. Localities must adopt a legally valid housing element by their statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including exposure to the "builder's remedy" as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or even court receivership. Localities that do not adopt a compliant housing element within 120 days from their statutory deadline also must complete any rezones within one year of their deadline, rather than the three years afforded to on-time adopters.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of RHNA, which is a figure determined by HCD through a demographic analysis of housing needs and population projections. It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will be slow or extremely difficult to build. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and not engage in exclusionary zoning practices.

RHNA Methodology: The RHNA process is used to determine how many new homes, and the affordability level of those homes, each local government must plan for in its housing element to cover the duration of the next eight-year planning cycle. RHNA is assigned via four income categories: very low-income (0-50% of AMI), low-income (50-80% of AMI), moderate income (80-120% of AMI), and above moderate income (120% or more of AMI).

The cycle begins with HCD and the Department of Finance projecting new RHNA numbers every eight years, followed by a COG or subregion developing a methodology for distributing the RHNA to jurisdictions within its region, and ultimately each jurisdiction identifying sites, completing rezoning, and removing development barriers to accommodate that RHNA. Orange County operates as a subregion already – OCCOG – within the Southern California Association of Governments (SCAG), meaning the county and its cities independently and collaboratively manage their own RHNA suballocation as assigned by SCAG.[5] San Diego County is a self-contained county COG, known as the San Diego Association of Governments or SANDAG, and thus also has management responsibility for its own RHNA allocations to member cities.[6]

The RHNA is statutorily obligated to further all of the following objectives:

1) Increasing the housing supply and mix of housing types, tenure, and affordability in all cities and counties within the regional in an equitable manner, which must result in each jurisdiction receiving an allocation of units for low- and very low-income households;

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[5] https://www.occog.com/housing
[6] https://www.sandag.org/projects-and-programs/regional-initiatives/housing-and-land-use/regional-housing-needs-assessment

2) Promoting infill development, socioeconomic equity, the protection of environmental and agricultural resources, and achievement of regional climate change reduction targets;
3) Promoting an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction;
4) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category; and
5) Affirmatively furthering fair housing.

In past housing element cycles, RHNA had been criticized as being a political rather than a methodologically sound, data-driven process. In the past, jurisdictions with a higher share of wealthier, whiter residents were more likely to have received lower allocations of moderate and lower income housing, while more diverse cities sometimes received higher allocations of those categories. The Legislature made a number of changes to the RHNA and housing element process over the past several years to strengthen the law and restrict the ability of jurisdictions to evade their housing obligations.

"RHNA Swapping": During the 5th Cycle housing element, existing law permitted two or more local governments to agree to an alternative distribution of appealed housing allocations between the affected local governments. The authority to conduct these transfers was removed from the RHNA process with the passage of AB 1771 (Bloom, Chapter 989, Statutes of 2018). These types of swaps raise a variety of concerns regarding the ability of jurisdictions to undercut the goals of the housing element process.

If the OCCOG subregion sought to request changes to the RHNA allocations it received from SCAG, there is an existing process by which they could make that request and appeal. The cities themselves could also appeal their subregional allocation to OCCOG. SANDAG also manages its own regional allocation and the same appeal avenues were available to its cities. Given these front-end authorities and appeal avenues, it makes little sense why transferability is needed on the back-end after the RHNA is distributed and jurisdictions have already had to have housing elements approved by HCD and where the state, COG, and subregional entity have all decided they should accommodate the specific number of units allocated.

This bill proposes to reauthorize RHNA swapping in a much broader manner than before. Whereas existing law prior to 2018 only permitted local governments to agree to an alternate distribution of a portion of housing allocations after they had been appealed to – and presumably rejected by – the COG or subregion, this bill does not require any appeal to be filed during the RHNA planning process. Instead, this bill contemplates a process whereby local governments in Orange and San Diego counties, at any time during the entire duration of the eight-year planning cycle, could choose to execute a transfer agreement outside of the scrutiny and oversight of the COG, and with no requirement to base the transfer agreement on any data or planning methodologies, as is the current requirement for appeals of RHNA allocations. This bill also permits all of the RHNA for a city – not just a portion – to be transferred to another city or cities. The COG or subregion takes into account a long list of considerations and analyses to determine the appropriate number of housing units across each income category that will support future population growth, increase housing opportunities, promote smart growth, and reduce overcrowding in each jurisdiction, which RHNA swapping would undermine.

Furthermore, this bill would permit a transferring city to offer financial incentives to transferee cities, seemingly as a way to offset the impacts and associated costs of the additional housing. There are no restrictions or rules regarding how much money a transferring city could offer in order to "offload" its undesired housing obligations. As previously mentioned, in prior RHNA cycles wealthier and whiter jurisdictions have often maneuvered very small allocations of lower and moderate income housing, but recent changes to the RHNA process have made it so these jurisdictions now see a RHNA allocation more commensurate with their actual housing need. There is a high likelihood some of these jurisdictions would seek to use the process in this bill to offer financial incentives to other jurisdictions to avoid the responsibility of having to accommodate the full scope of their RHNA – including lower-income housing – within their city. This would jeopardize the statutory goals of the RHNA process outlined in the prior section to ensure that lower-income housing is built in every city in the state, to reduce concentrations of deep poverty in cities that are disproportionately poor, diversify concentrations of high-income housing in affluent communities, and to affirmatively further fair housing.

In addition, this bill would undermine the intent of SB 35 (Wiener, Chapter 366, Statutes of 2017). SB 35 requires cities and counties to streamline housing developments that include specified percentages of affordable housing, if a jurisdiction has not met a portion of its RHNA requirements at certain intervals. This new requirement has given additional weight to the RHNA process because the trigger for whether or not a jurisdiction must streamline is based on whether or not they have met their RHNA numbers for above moderate income or lower-income permitting. Many jurisdictions have not met their lower-income RHNA, meaning they must streamline affordable housing projects that set aside at least 50% of units for low-income households. This bill would create a pathway for a transferring city to evade SB 35 streamlining requirements by offloading its unmet RHNA to another city.

This bill also has no restrictions on the geographic distance between a transferee and a transferring city within the counties of Orange and San Diego, raising the possibility that a transferring city could find a partner transferee far outside of its neighboring jurisdictions, or coastal communities could seek to transfer their RHNA to cities far inland. This increases the likelihood that such a transfer could undermine efforts to address jobs-housing imbalances and reduction of greenhouse gas emissions. None of these considerations have to be examined or weighed against the transfer agreement before it could be executed under these provisions.

The committee may wish to consider whether it is sound policy to reinstate a much broader, unchecked authorization for local governments in Orange and San Diego counties to RHNA swap than the version it previously removed from statute in 2018.

Arguments in Support: According to the Association of California Cities – Orange County, "This bill would establish a pilot program for the Counties of Orange and San Diego, including the cities within those counties, that allows local jurisdictions to transfer all or a portion of its allocation of the regional housing need as part of the Regional Housing Needs Assessment/Housing Element process to another local jurisdiction in the pilot program area. As we work towards closing the gap in available housing in California, it is essential to provide resources, tools, and flexibility for local agencies working to meet the need. This flexibility will help expedite the building of housing for Californians and facilitate meeting regional housing goals. For this reason, we support AB 2361."

Arguments in Opposition: A coalition of opponents, including SPUR, YIMBY Action, Circulate San Diego, and MidPen Housing, write, "California continues to be millions of units short and hundreds of thousands annually now and going into the future. The state should not consider giving any city relief in its Housing Element obligations because future generations in every income category deserve an opportunity to live in every community throughout the state. This proposal will only incentivize and embrace exclusive community behavior. We rely on these methodologies to enforce housing production on the cities. California must build millions of homes to address its housing shortage. It is unreasonable and inequitable to consider any efforts to increase housing supply in one city and allow for another to remain deficient in certain categories of new housing construction. This shortage in various income categories is a large contributor to an array of social and economic challenges, including homelessness, displacement, and affordability struggles for residents."

Related Legislation:

AB 617 (Davies) of 2021 was substantially similar to this bill but did not include the pilot limitation to the counties of Orange and San Diego. This bill died pending a hearing in this committee.

AB 1771 (Bloom), Chapter 989, Statutes of 2018: Among other changes, deleted the ability of two or more local governments to agree to an alternate distribution of appealed RHNA.

SB 35 (Wiener), Chapter 366, Statutes of 2017: Requires cities and counties to streamline housing developments that include specified percentages of affordable housing, if a jurisdiction has not met a portion of its RHNA requirements at certain intervals.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Cities - Orange County
Livable California

Opposition

Abundant Housing LA
California Community Builders
Circulate San Diego
MidPen Housing
SPUR
YIMBY Action

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2430 (Alvarez) – As Introduced February 13, 2024

SUBJECT: Planning and zoning: density bonuses: monitoring fees

SUMMARY: Prohibits a city, county, or city and county from charging local monitoring fees on 100% affordable housing developments using Density Bonus Law (DBL*)* to ensure the continued affordability required under DBL and any applicable local inclusionary housing ordinance. Specifically, **this bill**:

1) Defines "monitoring fee" as a recurring fee charged by a city, county, or city and county to oversee and ensure the continued affordability of deed-restricted affordable units in certain 100% affordable housing developments using DBL, as described in (2), and in any applicable local inclusionary housing ordinances.

2) Exempts 100% affordable housing developments utilizing DBL from local monitoring fees, beginning on January 1, 2025, when the following conditions are met:

    a) 100% of the all units in the developments, including total units and bonus units but excluding any managers units, are for lower-income households, except that up to 20% of the units may be for moderate-income households;

    b) The housing development is subject to a regulatory agreement with the California Tax Credit Allocation Committee (CTCAC) or the Department of Housing and Community Development (HCD);

    c) The applicant provides the local government with a copy of a recorded regulatory agreement with the CTCAC, California Debt Limit Allocation Committee (CDLAC), or HCD; and,

    d) The applicant agrees to provide the local government with the compliance monitoring document required by CTCAC, CDLAC, or HCD regulations.

3) Does not preclude a city, county, or city and county from eliminating local density bonus agreement requirements for any development projects in any location.

EXISTING LAW:

1) Establishes Density Bonus law, which provides a pathway for an applicant to seek a density bonus for housing in all cities, counties, or cities and counties in the state. (Government Code (GOV) 65915)

2) Requires cities and counties to grant a density bonus, based on a specified formula, when an applicant for a housing development of at least five units seeks and agrees to construct a project that will contain at least one of the following:

    a) Ten percent of the total units of a housing development for lower-income households;

b) Five percent of the total units of a housing development for very low-income households;

c) A senior citizen housing development or age-restricted mobilehome park;

d) Ten percent of the units in a common interest development (CID) for moderate-income households, provided the units are available for public purchase;

e) Ten percent of the total units for transitional foster youth, disabled veterans, or homeless persons;

f) Twenty percent of the total units for lower-income students in a student housing development, as specified; or,

g) One hundred percent of all units in the development are for lower-income households, except that up to 20 percent of the units may be for moderate-income households. (GOV 65915)

3) Mandates that agencies adopting a new service fee, or increasing an existing fee, charged to a development project must do so through an ordinance or resolution, and must be adopted through a public hearing. (GOV 66017)

4) Stipulates that any service fee charged may not exceed the estimated reasonable cost of providing the service for which the fee is charged. (GOV 66014)

5) Establishes the California Tax Credit Allocation Committee (CTCAC) (GOV 50199.17), California Debt Limit Allocation Committee (CDLAC) (GOV 8869.94), and various affordable housing funding programs through the California Department of Housing and Community Development (HCD).

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "All affordable housing projects that utilize State Density Law and receive state funding, are subject to compliance monitoring to ensure that the units are occupied by a tenant at an eligible income level and that developments meet habitability standards. This state level compliance monitoring is a thorough process that includes desk audits and physical inspections conducted by HCD and TCAC.

Although most cities rely on state monitoring activities to ensure compliance, some cities and counties charge developers a fee to also provide compliance monitoring. While local monitoring fees can vary, most are hundreds of dollars per unit annually, which is in addition to the monitoring fees the state charges.

California is one of the most expensive places to build housing in the state, which makes housing developments incredibly difficult to pencil. This is especially true for affordable housing projects that rely on state and federal funding to make it viable. Any additional cost, especially when it funds duplicative activities, can unnecessarily make or break the viability of a project. By cutting

duplicative costs for developers, AB 2430 will play an important role reducing the price of building affordable housing in California."

Statewide Housing Needs: According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update,[1] California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.[2]

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle. As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- 2.1 percent of the very low-income RHNA
- 4.8 percent of the low-income RHNA
- 4.8 percent of the moderate-income RHNA
- 12.7 percent of the above moderate-income RHNA

Cost of building affordable housing: It is expensive to build housing in California. The UC Berkeley Terner Center finds that challenging macroeconomic conditions, including inflation and high interest rates, affect the availability and cost of capital, resulting in rising costs for labor and materials.[3] Furthermore, workforce and supply shortages have exacerbated the already high price of construction in California, and economic uncertainty has made equity partners and lenders apprehensive about financing new housing development proposals.[4]

An analysis by the California Housing Partnership compares the cost of market rate development prototypes developed by the Terner Center with the median cost of developing affordable rental homes. In the four regions analyzed, the study found that the cost of developing one unit of affordable housing ranged from approximately $480,000 to $713,000, while the cost of developing one unit of market rate housing in the state ranged from approximately $508,000 to $637,000.[5]

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[1] California Department of Housing and Community Development, *A Home for Every Californian*: 2022 Statewide Housing Plan. March 2022, https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136
[2] U.S. Department of Housing and Urban Development, Point in Time Counts. https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] David Garcia, Ian Carlton, Lacy Patterson, and Jacob Strawn, *Making It Pencil: The Math Behind Housing Development (2023 Update)*, Terner Center for Housing Innovation, December 2023, https://ternercenter.berkeley.edu/research-and-policy/making-it-pencil-2023/
[4] IBID.
[5] Mark Stivers, *Affordable Housing Compares Favorably to Market-Rate Housing From a Cost Perspective*, California Housing Partnership, January 2024: https://chpc.net/affordable-housing-compares-favorably-to-market-

Affordable housing monitoring fees: Monitoring fees are one type of fees commonly applied to deed-restricted affordable housing developments in California. Affordable housing monitoring fees are charged by local governments to oversee the compliance of affordable housing developments with regulatory agreements and affordability covenants. These fees are typically collected annually and are used to cover the costs associated with ensuring that affordable housing units remain affordable at the rental rates specified in the deed restriction, and monitoring tenant income eligibility and rent restrictions. The stated goal of these fees is to sustain the long-term affordability and quality of housing while ensuring that developers and property owners adhere to the commitments made under affordable housing agreements.

The amount and type of monitoring fees charged by local governments vary from jurisdiction to jurisdiction. Some jurisdictions charge fees on a per unit basis, some charge a flat fees, and some apply a sliding scale based on the project size. For example, the City of Berkeley charges a monitoring fee of $432 per unit per year, while the City of Dublin charges a sliding scale based on the number affordable units: $1,448 per year for developments of 20 units or less, $2,321 per year for 21-100 units, and $3,343 annually for projects of over 101 units.

These local monitoring fees are often charged on top of state monitoring fees. When state funds are involved in affordable housing development, which is almost always the case in California, the state conducts extensive monitoring of the deed restricted affordable units funded. For projects that receive affordable housing funding in the form of loans, tax credits, or bonds, the following state monitoring fees apply:

- **HCD**: typically charges an annual fee of 0.42 percent of the original principal loan balance for most conventional multifamily loan programs, though the fee may vary based on the specific funding program. This funds routine physical site inspections, which includes, but is not limited to, an examination of tenant files, unit conditions, property standards (common areas, exterior conditions), as well as review of the Management Plan and/or Property Management Agreement.

- **CTCAC**: charges a one-time per unit fee of $410 to cover the costs associated with compliance monitoring throughout the Federal Compliance Period and the Extended-Use period.

This bill seeks to reduce the duplication of monitoring fees charged for 100% affordable housing projects utilizing Density Bonus Law by relying on the thorough state-level monitoring rather than having local governments duplicate these monitoring efforts when state monitoring is required. At the higher end of the spectrum, this could save the typical affordable housing development tens of thousands of dollars in annual fees. However, it is important to ensure that monitoring of all deed-restricted affordable housing units can still be conducted throughout the state and that the provisions of this bill do not prevent local agencies from conducting monitoring that would not otherwise be done by CTCAC, CDLAC, or HCD.

Density Bonus Law: Density Bonus Law (DBL) was originally enacted in 1979 as an incentive to encourage housing developers to produce affordable units at below market rates. In return for including a certain percentage of affordable units, housing developers receive the ability to add

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rate-housing-from-a-cost-perspective/#:~:text=It%20turns%20out%20that%20costs,market%2Drate%20developments%20do%20not.

additional units for their project above the jurisdiction's allowable zoned density for the site (thus the term "density bonus").

The affordability units built using density bonus must be deed restricted for 55 years. Additionally, DBL specifies concessions and incentives around development standards (e.g., architectural, height, setback requirements) and reductions in vehicle parking requirements that projects can receive to offset the cost of building affordable units. Both market rate and 100 percent affordable housing projects can use these provisions and all local governments are required to adopt a density bonus ordinance. However, failure to adopt an ordinance does not exempt a local government from complying with the requirements of DBL. DBL is a critical tool in the state's toolkit when it comes to reducing the price of affordable housing development, and incentivizing the construction of high density housing.

Arguments in Support: According to the California Housing Consortium and Housing California, the bill's co-sponsors, AB 2430 "would help reduce the cost of producing affordable housing.

All affordable housing developments in California that receive state funding are subject to compliance monitoring by the state to ensure that the units are occupied by a tenant at an eligible income level and to ensure that developments meet habitability standards. Compliance monitoring is performed by the California Tax Credit Allocation Committee (TCAC) and the California Department of Housing and Community Development (HCD). For instance, TCAC's compliance monitoring program annually collects information to ensure that the income of families residing in low-income units and the rents they are charged are within regulatory limits.

AB 2430 would prohibit cities and counties from charging affordable housing developers for local compliance monitoring if the development uses Density Bonus law and is subject to a monitoring agreement with TCAC, CDLAC, HCD. This bill would lower costs for affordable housing development without compromising important compliance monitoring that already takes place at the state level."

Arguments in Opposition: According to the San Diego Housing Commission (SDHC), Assembly Bill "would prevent local governments from charging fees for conducting compliance monitoring on deed-restricted affordable housing units constructed under State Density Bonus Law or applicable local inclusionary housing ordinances without absolving jurisdictions from ensuring continued affordability under existing local and federal compliance requirements.

The process the bill proposes to use moving forward, where an affordable housing developer agrees to provide the local jurisdiction the self-certification authorizations and tax documents submitted to the California Debt Limit Allocation Committee (CDLAC) and the California Tax Credit Allocation Committee (TCAC), would impact a jurisdiction's ability to enforce federal and local requirements, which it is contractually obligated to do. It also does not provide the level of accountability that active compliance monitoring provides, which may result in an increase of fraud, non-compliance, and impacts to low-income households."

Committee amendments: Staff recommend the bill be amended as follows to allow local governments to continue to collect monitoring fees if the project is subject to affordability requirements that are not being tracked by CTCAC, CDLAC, or HCD, including local affordability requirements tied to local funding that are different from state requirements,

requirements of a local density bonus programs, or affordability requirements from a funding source other than CTCAC, CDLAC, or HCD funding, among other clarifying amendments:

- Modify Government Code Section 65915(w)(1) to include certain exemptions for when a local government may continue to charge a monitoring fee, found in 65915(x) below;
- Modify Government Code Section 65915(w)(1)(A) to add the California Debt Limit Allocation Committee to the list of state organizations that require a recorded regulatory agreement;
- Strike the provision of Government Code Section 65915(w)(2) which states that this subdivision does not preclude a local government from eliminating a local density bonus agreement requirement for development projects of any types in any location; and,
- Add Government Code Section 65915(x) to specify that local governments can still collect monitoring fees if on 100% affordable DBL projects if the applicant:
    - Utilizes a local density bonus program that requires deeper affordability, including a higher number of affordable units, or uses a local incentive program where a percentage of the units are affordable to and occupied by moderate income households;
    - Accepts a local funding source that requires different affordability, measured through area median income or rents, than what is monitored for by the California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development; or,
    - Accepts funding from a state, regional, or federal agency other than the California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development that requires local monitoring activities that would not otherwise be conducted by the California Tax Allocation Committee, California Debt Limit Allocation Committee, Department of Housing and Community Development, or the public agency issuing the funding.

65915.

(w) (1) A city, county, or city and county shall not charge a monitoring fee on a housing development that meets the criteria of subparagraph (G) of paragraph (1) of subdivision (b) if all of the following conditions are met***, except as otherwise provided in subdivision (x)***:

(A) The housing development is subject to a recorded regulatory agreement with the California Tax Credit Allocation Committee***, the California Debt Limit Allocation Committee,*** or the Department of Housing and Community Development that requires compliance with subparagraph (G) of paragraph (1) of subdivision (b).

(B) Prior to receiving a building permit, the applicant provides to the local government a fully executed Tax Credit Reservation Letter indicating that the applicant accepted the award.

(C) The applicant provides to the local government a copy of a recorded regulatory agreement with the California Tax Allocation Committee, the California Debt Limit Allocation Committee, or the Department of Housing and Community Development.

(D) The applicant agreed to provide to the local government the compliance monitoring document required pursuant to California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development regulations.

~~(2) This subdivision does not preclude a city, county, or city and county from eliminating a local density bonus agreement requirement for development projects of any type in any location.~~

(2)(~~3~~) Beginning on January 1, 2025, a housing development that is currently placed in service, is subject to a monitoring fee, and meets the requirements of paragraph (1) shall no longer be subject to that fee.

(3)(4) For purposes of this subdivision, "monitoring fee" means a fee charged by a city, county, or city and county on a recurring basis to oversee and ensure the continued affordability of a housing development pursuant to this section and any applicable local inclusionary housing ordinance.

(x) A city, county, or city and county may charge a monitoring fee on a housing development that meets the criteria of subparagraph (G) of paragraph (1) of subdivision (b) if any of the following apply:

1. ***The applicant utilizes a local density bonus program that requires deeper affordability, including a higher number of affordable units, or uses a local incentive program where a percentage of the units are affordable to and occupied by moderate income households.***
2. ***The applicant accepts a local funding source that requires different affordability, measured through area median income or rents, than what is monitored for by the California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development.***
3. ***The applicant accepts funding from a regional, state, or federal agency other than the California Tax Allocation Committee, California Debt Limit Allocation Committee, or Department of Housing and Community Development that requires local monitoring activities that would not otherwise be conducted by the California Tax Allocation Committee, California Debt Limit Allocation Committee, Department of Housing and Community Development, or the public agency issuing the funding.***

Related legislation:

AB 578 (Berman), 2023 would have standardized the monitoring fees charged by the California Department of Housing and Community Development (HCD) for the No Place Like Home program to 0.42% per year, or $260 per unit, whichever is less. The bill was held in suspense.

AB 434 (Daly) Chapter 192, Statutes of 2020 standardized the monitoring fee and procedures for certain multifamily housing funding programs administered by HCD to 0.42% per year, and standardized the monitoring requirements for programs impacted by the bill.

Double referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Consortium (Sponsor)
Housing California (Sponsor)
Associated General Contractors
Brilliant Corners
California Apartment Association
Community Corporation of Santa Monica
EAH Housing
Homes & Hope
LeadingAge California
MidPen Housing Corporation
Mutual Housing California
Wakeland Housing and Development Corporation

Opposition

City of Inglewood

Oppose Unless Amended

City of Lafayette
San Diego Housing Commission

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2460 (Ta) – As Amended April 1, 2024

SUBJECT: Common interest developments: association governance: member election

SUMMARY: Requires the association of a common interest development (CID) to reconvene an election of directors to a later meeting date, rather than authorizing the board to call for a subsequent election, if a voting quorum is not present. Specifically, **this bill**:

1) Requires, rather than authorizes, a homeowners association (HOA), rather than the association's board of directors, to reconvene a meeting for the election of directors to a later date if a quorum is not met, at which time the quorum to elect directors will be 20% of the association's members voting in person, by proxy, or by secret ballot.

    a) Provides that if the HOA already has a quorum that is lower than 20% established, the 20% quorum provision does not apply.

2) Ensures the consistent use of the phrase "in person, by proxy, or by secret ballot" throughout Civil Code (CIV) Section 5115 when referencing the process in which an association holds an election of directors.

3) Permits these elections to be held at any HOA meeting, assuming all of the procedures outlined in CIV 5115 are followed, rather specifying it must occur at a "membership meeting."

EXISTING LAW:

1) Establishes the Davis-Stirling Common Interest Development Act, which provides rules and regulations governing the operation of residential CIDs and the rights and responsibilities of Homeownership Associations (HOAs) and HOA members. (Civil Code (CIV) Section 4000 *et seq*.)

2) Requires HOAs, in elections of directors and recall elections, to provide general notice of all of the following at least 30 days before ballots are distributed:

    a) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections;

    b) The date, time, and location of the meeting at which the quorum will be determined, if a quorum is required by the association's governing documents, and at which ballots will be counted;

    c) The list of all candidates' names that will appear on the ballot;

    d) Individual notice of a)-c) must be delivered pursuant to existing law if individual notice is requested by a member;

e) Language stating that if a quorum for the election of directors is required, and the quorum is not met, the board may call a subsequent meeting at least 20 days after a scheduled election, at which time the quorum will be 20 percent of the association's members voting in person, by proxy, or by secret ballot. (CIV Section 5115)

3) Requires ballots and two preaddressed envelopes with instructions on how to return ballots to be mailed by first-class mail or delivered by the association to every member no less than 30 days prior to the deadline for voting. Requires associations to use procedures used by California counties for ensuring confidentiality of vote by mail ballots, as specified. (CIV 5115)

4) Requires a quorum for elections of director and recall elections only if so stated in the governing documents of the association or other provisions of law. If a quorum is required by the governing documents, requires the inspector of elections to treat each ballot received as a member present at a meeting for purposes of establishing a quorum. (CIV 5115)

5) For incorporated associations, requires a quorum at a meeting of members to be one-third of the voting power, represented in person or by proxy. Authorizes corporation bylaws to set a different quorum subject to specified restrictions. (Corporations (CORP) Code 7512).

6) For associations that require a quorum for elections of directors, and in the absence of a quorum, authorizes the board to call a subsequent meeting at least 20 days after a scheduled election if the quorum is not met, at which time the quorum will be 20 percent of the association's members voting in person, by proxy, or by secret ballot. The HOA is required to provide general notice of the meeting, which must include:

    a) The date, time, and location of the meeting;

    b) The list of all candidates;

    c) A statement that 20 percent of the association present or voting by proxy or secret ballot will satisfy the quorum requirements for the election and that the ballots will be counted if a quorum is reached. (CIV 5115)

7) Provides that each director of a corporation, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified, unless the director has been removed from office, and except as otherwise provided in the articles or bylaws. (CORP Code 7220)

8) Authorizes, under specified circumstances, a county superior court to order a meeting or vote of members in a manner the court finds fair and equitable, if for any reason it is impractical or unduly difficult for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, and a director, officer, delegate, or member petitions the court for such authorization. (CORP Code 7515)

9) In an order is issued pursuant to 7), authorizes the court to dispense with any requirement related to the holding of and voting at meetings or obtaining votes, including any requirement as to quorums or as to the number of percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or existing law. (CORP Code 7515)

FISCAL EFFECT: None.

COMMENTS:

Author's Statement: According to the author, "AB 2460 would clarify the correct vocabulary as defined by the California Department of Real Estate when it comes to proceeding with a Board of Directors election for a Homeowners Association."

Background on Common Interest Developments (CIDs): CIDs are a type of housing with separate ownership of housing units that also share common areas and amenities. There are a variety of different types of CIDs, including condominium complexes, planned unit developments, and resident-owned mobilehome parks. In recent years CIDs have represented a growing share of California's housing stock. Data from 2019 indicates that there are an estimated 54,065 CIDs in the state that are made up of 5 million housing units, or about 35 percent of the state's total housing stock.

CIDs are regulated under the Davis-Stirling Act (Civil Code Section 4000 *et seq*.) as well as the governing documents of the homeowners association (HOA), including the bylaws, declaration, and operating rules. CIDs can also have Covenants, Conditions, and Restrictions (CC&Rs) which are filed with the county and recorded at the time they are established. Owners in a CID are contractually obligated to abide by the CC&Rs and the governing documents of a CID, which specify rules such as parking policies, allowable modifications to homes, and rental restrictions. Additionally, HOAs are governed by a board of directors elected by the membership in elections that closely resemble California's vote-by-mail process. In addition, many associations use a managing agent to assist with finances, logistics, and other services provided to homeowners.

HOA boards have a number of duties and powers. The board determines the annual assessments that members must pay in order to cover communal expenses. The board enforces the community rules and can propose as well as make changes to those rules. If members do not pay their assessments in full or on time, or if members violate the community rules, the board has the power to fine the members and, if necessary, the power to foreclose upon the offending member's property. This combination of responsibilities and authority has led multiple courts to observe that HOAs function in many ways almost "as a second municipal government, regulating many aspects of [the homeowners'] daily lives." (*Villa Milano Homeowners Ass'n v. Il* Davorge (2000) 84 Cal.App.4th 819, 836)

***HOA Elections and Issues Related to Quorum*:**

HOAs are required to hold elections for board directors when a seat becomes vacant and at least every four years. The Davis-Stirling Act requires HOA elections to conform to certain procedures, including double-stuffed ballots and the selection of at least one independent third party inspector of elections. Voting for board members is the fundamental way a homeowner in a CID can advocate to have their interests represented in the HOA's governance. Recent legislative actions related to HOA election rules have addressed qualifications for nominees to the board (SB 323 (Wieckowski), Chapter 858, Statutes of 2019), challenges with finding enough members who are willing to run for the board and procedures for election by acclamation (SB 754 (Moorlach), Chapter 858, Statutes of 2019, and AB 502 (Davies), Chapter 517, Statutes of 2021), and processes for authorizing a lower voting quorum requirement under certain circumstances AB 1458 (Ta), Chapters 303, Statutes of 2023.

Quorum is the minimum number of members of an association that must be "present" – either in person or via mailed ballots – in order to make the HOA election proceedings of a meeting legally valid. Quorum requirements differ depending on the type of HOA that has been formed and whether or not quorum is required in HOA governing documents. In most instances, if quorum is required by an HOA's governing documents, the quorum is a "50 percent + 1" threshold of members. If an HOA has chosen to incorporate as a nonprofit mutual benefit corporation, then state law establishes quorum at 33 percent of membership.

For an election of HOA directors, and in the absence of meeting quorum as required by the association's governing documents or Section 7512 of the Corporations Code for nonprofit mutual benefit corporations, unless a lower quorum is authorized by the association's governing documents, the association may adjourn the proceeding to a subsequent date at least 20 days after the initial election date, at which time the quorum required will be 20% of the association's voting members present in person, by proxy, or by secret written ballot received.

This bill makes technical cleanup to the provisions of AB 1458 (Ta), Chapters 303, Statutes of 2023, by clarifying that the election may be reconvened to a later date if a quorum is not met, rather than requiring the HOA to call a separate subsequent election. The bill maintains the same timing and general notice requirements established by AB 1458, but clarifies that the election may be reconvened to a later date at which time a 20% quorum of voting members will be required. This technical language regarding a reconvened meeting is required to be incorporated into the general notice of the initial election of the board of directors, and in the general notice of the reconvened meeting.

Arguments in Support: According to the Community Associations Institute's Legislative Action Committee (CAI-CLAC), AB 2460 "clarifies existing law in providing for reduced quorum for Board member elections.

In 2023, the legislature approved AB 1458 (Ta), which authorizes an association that fails to reach quorum for an election of the Board, to call another meeting within 30 days where the quorum requirement will be reduced to 20% of the association's members voting in person, proxy, or secret written ballot.

AB 1458 states the Board shall call for the reconvened meeting which results in some confusion because many associations hold their election during the Annual Members Meeting. In this situation, it would be the Association's responsibility to call for the reconvened meeting.

AB 2460 would clarify who has the responsibility to call for the reconvened meeting, require a reconvened meeting to be called when quorum is not reached, and clean up language describing how quorum is counted."

Arguments in Opposition: According to the Center for California Homeowner Association Law, "What AB2460 would permit is an undemocratic process through which a minimal number of homeowners – without meaningful notice to their neighbors -- convene in what is essentially a closed process in order to choose the board. Furthermore, the legislation offers no recourse for owners shut out of the process to challenge or overturn the seating of a board done via this process."

Committee Amendments: Staff recommend the bill be amended as follows to provide more flexibility to the CID association and to align this bill with the intent of AB 1458 (Ta):

- Modify Civil Code Section 5115 to specify that the association **may** adjourn the meeting, rather than **shall** adjourn the meeting.

- Modify Corporations Code Section 7512 to specify that the association **may** adjourn the meeting, rather than **shall** adjourn the meeting.

SECTION 1.

Section 5115 of the Civil Code is amended to read:

5115.
(5) (A) If the association's governing documents require a quorum for election of directors, a statement that the association ~~shall~~ ***may*** call a reconvened meeting at least 20 days after a scheduled election if the required quorum is not reached, at which time the quorum of the membership to elect directors will be 20 percent of the association's members voting in person, by proxy, or by secret ballot.

(d)(2) For an election of directors of an association, and in the absence of meeting quorum as required by the association's governing documents or Section 7512 of the Corporations Code, unless a lower quorum for a reconvened meeting is authorized by the association's governing documents, the association ~~shall~~ ***may*** adjourn the meeting to a date at least 20 days after the adjourned meeting, at which time the quorum required for purposes of a reconvened meeting to elect directors shall be 20 percent of the association's members voting in person, by proxy, or by secret ballot.

Section 7512 of the Corporations Code is amended to read:

7512.
(e) For an election of directors of a corporation that is a common interest development, and in the absence of meeting quorum as required by the association's governing documents or this section, unless a lower quorum for a reconvened meeting is authorized by an association's governing documents, the corporation ~~shall~~ ***may*** adjourn the meeting to a date at least 20 days after the adjourned meeting, at which time the quorum required for purposes of a reconvened meeting to elect directors shall be 20 percent of the association's members voting in person, by proxy, or by secret ballot.

Related Legislation:

AB 1458 (Ta), Chapters 303, Statutes of 2023, authorized a lower quorum requirement for common interest development (CID) association elections of directors in subsequent elections under specified circumstances

AB 502 (Davies), Chapter 517, Statutes of 2021 expanded the ability to perform acclamation elections to all HOAs in the state, regardless of size, and made other changes to the acclamation process.

AB 1726 (Swanson) of the 2009-2010 Session would have created a two-tiered reduced quorum threshold for HOAs who were unable to meet quorum requirements for board of directors elections. The bill would have set a statewide quorum standard for a second election attempt at 40 percent of the HOA's voting power, and 33 percent for third or subsequent election attempts. This bill was vetoed by the Governor:

> *To the Members of the California State Assembly:*
>
> *I am returning Assembly Bill 1726 without my signature.*
>
> *This bill would allow a homeowners association (HOA) of a common interest development (CID) unable to achieve a quorum for a member meeting or an election of directors to lower the quorum requirement for the second election to 40% and for the third or additional elections to 33%, unless otherwise specified in the CID's governing documents.*
>
> *I believe that this bill is unnecessary because existing law allows a HOA to amend its governing documents to establish a lower quorum. I am also concerned that this bill would interfere with the basic democratic principle of CIDs.*
>
> *For these reasons I cannot sign this bill.*
>
> *Sincerely,*
>
> *Arnold Schwarzenegger*

Double referred: This bill was also referred to the Assembly Committee on Judiciary, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Community Associations Institute - California Legislative Action Committee

Opposition

Center for Homeowner Association Law

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2539 (Connolly) – As Amended March 21, 2024

SUBJECT: Mobilehome parks: sale: notice: right of first refusal

SUMMARY: Enacts the Mobilehome Resident Opportunity to Purchase Act. Specifically, **this bill**:

1) Increases the notice timeline under which a mobilehome park owner must provide written notice of their intention to sell the mobilehome park from not less than 30 days to not less than 120 days nor more than one year before entering into a written listing agreement with a licensed real estate broker for the sale of the park, offering to sell the park to any party, or accepting an offer from any buyer.

2) Modifies the requirement for the written notice to be provided by first-class mail or by personal delivery to specified officers of any resident organization (RO) formed by homeowners for purchasing the mobilehome park by also requiring delivery of the notice to the following:

    a) All residents of the mobilehome park; and

    b) The Department of Housing and Community Development (HCD).

3) Provides a RO the right of first refusal to purchase the mobilehome park, and requires a RO interested in purchasing the park to make an offer within six months of receiving the notice subject to 1).

4) Requires a mobilehome park owner to engage in good-faith negotiations with the RO, including by providing a written response within seven calendar days of receiving an offer from a RO, which must accept or reject the offer, and if rejected, must state the following:

    a) The current price, terms, or conditions of an acceptable offer that the owner has received to sell the mobilehome park, if the price, terms, or conditions have changed since the owner gave notice to the residents subject to 1);

    b) A written explanation of why the owner is rejecting the offer from the RO and what terms and conditions must be included in a subsequent offer for the park owner to potentially accept it;

    c) The price, terms, and conditions of an acceptable offer stated in the response must be universal and applicable to all potential buyers, and must not be specific to and prohibitive of a RO making a successful offer to purchase the park.

5) Defines "good faith negotiations" to mean evaluating an offer to purchase a mobilehome park from the park's RO without considering factors, including, but not limited to:

    a) The time period for closing;

b) The type of financing or the payment method; or

c) Whether the offer is contingent on financing, payment method, appraisal, or title work.

6) Prohibits an owner from negotiating with or accepting an offer from another party until six months have elapsed from delivery of the notice subject to 1).

7) Deletes an existing requirement that an offer to sell a park must not be construed as an offer unless it is initiated by the park owner or agent.

8) Deletes an existing exemption that a park owner is not required to comply with the current law 30 day written notice requirement of intention to sell the park unless the following conditions are met:

a) The RO has first furnished the park owner or park manager a written notice of the name and address of the president, secretary, and treasurer of the RO to whom the notice of sale must be given;

b) The RO has first notified the park owner or manager in writing that the park residents are interested in purchasing the park, which must be made prior to a written listing or offer to sell the park by the park owner, and must be given once each year thereafter that the park residents are interested in purchasing the park; and

c) The RO has furnished the park owner or manager a written notice within five days of any change in the name or address of the officers of the RO to whom the notice of sale must be given.

EXISTING LAW:

1) Requires a mobilehome park owner to provide written notice of their intention to sell the mobilehome park not less than 30 days nor more than one year before entering into a written listing agreement with a licensed real estate broker for the sale of the park, or offering to sell the park to any party. Requires the written notice to be provided by first-class mail or by personal delivery to the president, secretary, and treasurer of any RO formed by homeowners in the mobilehome park as a nonprofit corporation, stock cooperative corporation, or other entity for purposes of converting the mobilehome park to condominium or stock cooperative ownership interests and for purchasing the mobilehome park from the management. (Civil Code (CC) Section 798.80(a))

2) Prohibits an offer to sell a park from being construed as an offer under existing law unless it is initiated by the park owner or agent. (CC 798.80(a))

3) Exempts a mobilehome park owner from being required to comply with 1) above unless the following conditions are met:

a) The RO has first furnished the park owner or manager a written notice of the name and address of the president, secretary, and treasurer of the RO to whom the notice of sale must be given;

b) The RO has first notified the park owner or manager in writing that the park residents are interested in purchasing the park, which must be made prior to a written listing or

offer to sell the park by the park owner, and must be given once each year thereafter that the park residents are interested in purchasing the park; and

c) The RO has furnished the park owner or manager a written notice within five days of any change in the name or address of the officers of the RO to whom the notice of sale must be given. (CC 798.80(b))

4) Provides that nothing in 1)-3) affects the validity of title to real property transferred in violation of specified law, although a violation subjects the seller to civil action by homeowner residents of the park or the RO. (CC 798.80(c))

5) Provides that nothing in 1)-3) affects the ability of a licensed real estate broker to collect a commission pursuant to an executed contract between the broker and the mobilehome park owner. (CC 798.80(d))

6) Exempts from 1)-3) any of the following:

a) Any sale or other transfer by a park owner who is a natural person to any relation in specified laws;

b) Any transfer by gift, devise, or operation of law;

c) Any transfer by a corporation to an affiliate, as defined;

d) Any transfer by a partnership to any of its partners;

e) Any conveyance resulting from the judicial or nonjudicial foreclosure of a mortgage or deed of trust encumbering a mobilehome park or any deed given in lieu of such a foreclosure;

f) Any sale or transfer between or among joint tenants or tenants in common owning a mobilehome park; or

g) The purchase of a mobilehome park by a governmental entity under its powers of eminent domain. (CC 798.80(e))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 2539 recognizes the need for a more equitable process, granting mobilehome park residents the time required to form a resident organization for the purpose of purchasing their community. The bill proposes a reasonable extension to the notice period, providing residents with six months from the receipt of the intention to sell notice. AB 2539 embodies principles of fairness and inclusivity, offering a balanced approach to mobilehome park sales. This bill will allow us to take a significant step toward fostering resilient communities, preserving affordable housing, and empowering residents in decision-making processes."

Background: More than 700,000 people live in California's approximately 4,700 mobilehome parks. Mobilehomes are not truly mobile, in that it is often cost prohibitive to relocate them. The

cost to move a mobilehome ranges from $2,000 to upwards of $20,000 depending on the size of the home and the distance traveled. A mobilehome owner whose home is located in a mobilehome park does not own the land the unit sits on, and must pay rent and fees for the land and any community spaces to their parkowner, unless the park is collectively owned by the residents, in which case the RO operates like a homeowners association. According to the Mobilehome Park Homeowners Alliance, California currently has 183 resident-owned parks, with an estimated 33,564 mobilehome spaces and another 1,300 recreational vehicle spaces.[1]

The Mobilehome Residency Law (MRL) extensively regulates the relationship between landlords and homeowners who occupy a mobilehome park. A limited number of provisions also apply to residents who rent, as opposed to own, their mobilehome. The MRL has two parts: Articles 1 through 8 apply to most mobilehome parks and Article 9 applies to resident-owned parks or parks which are established as a subdivision, cooperative or condominium. The provisions cover many issues, including, but not limited to: 1) the rental and lease contract terms and specific conditions of receipt and delivery of written leases, park rules and regulations, and other mandatory notices; 2) mandatory notice and amendment procedures for mobilehome park rules and regulations; 3) mandatory notice of fees and charges, and increases or changes in them; and 4) specified conditions governing mobilehome park evictions. A dispute that arises regarding the MRL generally must be resolved in a civil court of competent jurisdiction.

HCD oversees several areas of mobilehome law, including health and safety standards, registration and titling of mobilehomes and parks, and, through the Mobilehome Ombudsman, assists the public with questions or problems associated with various aspects of mobilehome law. The Mobilehome Ombudsman provides assistance by taking complaints and helping to resolve and coordinate the resolution of those complaints. However, the Ombudsman does not have enforcement authority for the MRL, and cannot arbitrate, mediate, negotiate, or provide legal advice on mobilehome park rent disputes, lease or rental agreements, but may provide general information on these issues. The Mobilehome Residency Law Protection Program at HCD also intakes resident complaints regarding alleged violations of the MRL and refers complaints to legal service providers.

Notice of Intention to Sell a Park: The MRL currently requires a mobilehome park owner to notify a RO at least 30 days and no more than a year before listing the park for sale with a real estate broker or offering to sell the park to any party. SB 1769 (Craven, 1986) initially required a park owner to provide no less than 10 and no more than 30 days' notice, but in 1990 the Legislature increased the notice period to no less than 30 and no more than a year. This bill would increase the minimum notice from no less than 30 days to no less than 120 days prior to listing or offering to sell a park, and would create a right of first refusal for a RO to make an offer to purchase a park within six months of receiving notice. This bill would also include acceptance of an off-market offer from any buyer as an event that would trigger the 120-day notice requirement and six month first right of refusal, to address the recent increase of off-market purchase offers being made to parks that are not listed for sale. The author and sponsor points out that many of these provisions are modeled after the state of Colorado's recently enacted mobilehome resident right of first refusal law.[2]

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[1] https://mhphoa.com/ca/roc/
[2] https://leg.colorado.gov/bills/hb20-1201

Deleting Exemptions and Adding New Notice Recipients: The current MRL requirement for notice of intention to sell a park contains a fairly broad exemption that a parkowner is not required to comply with the notice requirement unless: 1) a RO has already been formed prior to the park being listed for sale; 2) a president, secretary, and treasurer have been appointed and their names provided to the parkowner; 3) the RO has provided a notice to the parkowner of their interest in purchasing the park before any listing is made; 4) the RO has continued to renew that notice each year; and 5) if any officers change, the RO has provided written notice to the parkowner within five days of that change and included the names and addresses of the new officers. There is also no current obligation on the parkowner to grant any consideration to a RO purchase offer, which the sponsor points out can discourage residents from even attempting to explore what it would take to make a purchase offer for their community despite the many benefits of park conversion to resident ownership. This bill would require a parkowner to engage in good-faith negotiations with a RO that did make a purchase offer on a park, but does not obligate the parkowner to accept a RO offer if it does not meet the parkowner's price, terms, or conditions. A parkowner would be prohibited from applying overly restrictive conditions to a RO's purchase offer and must make their asking price, terms, and conditions generally universal and applicable to all potential buyers.

Current Challenges for Resident Purchases: The state's mobilehome parks are home to hundreds of thousands of Californians, many of whom are seniors, veterans, and people with disabilities living on fixed incomes in what has become one of the last naturally affordable housing options in California's extreme housing crisis. Many homeowners have a significant financial investment in their homes and yards, though the land itself does not belong to them and their homes often depreciate in value and must be purchased with high-interest "chattel loans" because they are not considered real property. Displacement due to a park sale – which may lead to increases in rent or park closures to convert the land to a different use – can be disruptive and expensive, as residents face a dilemma between attempting to move their homes, finding a new place to live which may be much less affordable, or sometimes simply abandoning their home.

According to the author and sponsor, some residents feel that it is pointless to organize for the purposes of a potential purchase under the existing MRL process. Even in situations where a RO has already been formed and is working to purchase a park, there are barriers to securing financing, especially within the existing short notice timeframe. However, private investors have access to significant capital to be able to make purchase offers quickly, whereas resident organizations and nonprofit partners must seek competitive financing or subsidies from government programs with numerous regulatory requirements and lengthy award timelines. According to the Lincoln Institute of Land Policy and PBS, about 800,000 mobilehome parks nationwide were purchased by institutional investors between 2014 and 2022.[3]

Residents purchasing their community can help stabilize parks, create financial security for vulnerable park residents, limit the risk of future rent spikes or park closures, and democratize the governance and management of parks. Resident organizations that successfully purchase their park become responsible for upkeep and maintenance of the park, often via a homeowners association or cooperative.

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[3] https://www.pbs.org/newshour/economy/rents-spike-as-large-corporate-investors-buy-mobile-home-parks

Manufactured Housing Opportunity and Revitalization (MORE) Program: The MORE program helps fund a variety of activities intended to keep mobilehome parks a safe and affordable homeownership option. MORE funds can be used for the acquisition, conversion to RO ownership, rehabilitation, reconstruction and replacement of mobilehome parks, as well the remediation of health and safety items of both parks and individual mobilehomes. Funding priorities from the most recent Notice of Funding Availability were given to resident-owned parks applying for loans to address serious health, safety, or code violations or suspended permits to operate, those with severe violations posing risks to life, health, and safety, and those with suspended permits to operate.[4]

Preservation Notice Law: Finding that federal notice laws do not go far enough in warning tenants and local governments of the potential loss of affordable homes or in encouraging preservation transfers, California enacted its own state Preservation Notice Law in 1987. Government Code Sections 65863.10-13 contain a series of provisions designed to give tenants in affordable housing sufficient time to understand and prepare for potential rent increases, as well as to provide tenant ROs, local governments and potential preservation buyers with an opportunity to preserve property that has soon-to-expire affordability restrictions. Made permanent in 2011, the Preservation Notice Law has become a critical tool for preservation in the state as it has increased opportunities for preservation transfers, thereby extending affordability of developments with existing lower-income tenants for an additional 30-55 years and preventing displacement and possible homelessness when affordable properties might revert to market rates.

This bill would import several provisions of the Preservation Notice Law into the MRL for mobilehome park sales, including requiring notice of a sale to be provided to every resident of a park as well as to HCD at least 180 days prior to a listing being made, allowing the RO a first right of purchase opportunity before entertaining private market offers for the property, and the creation of a 180-day window for intaking those offers before private offers can be accepted. Although most mobilehome parks in the state are not deed-restricted or subject to affordability requirements outside of local rent control ordinances, they represent one of the few remaining pools of naturally-occurring affordable housing in the state. Mobilehome park residents often share many of the same characteristics with low-income tenants in affordable properties – they do not own their property and are in a similar landlord-tenant legal relationship with their parkowner; many live on social security or other forms of fixed incomes; and if they were to be displaced from their current living situation, they could face significant challenges locating other affordable housing options in their communities.

Arguments in Support: According to the bill's sponsor, Legal Aid of Sonoma County, and a coalition of supporters including Disability Rights California, Public Advocates, and the California Rural Legal Assistance Foundation, "Mobilehome residents often have a significant financial investment in their homes, and displacement due to park sale can be disruptive and expensive. Many residents are seniors and/or living on a fixed income which is inadequate to cover rising rents. A right of first refusal allows residents to secure long-term affordability and stability by purchasing the park and controlling future rent increases. It can help address the growing issue of displacement and loss of affordable housing options, particularly for vulnerable populations like fixed income seniors. Additionally, owning the park incentivizes residents to

[4] https://www.hcd.ca.gov/about-hcd/newsroom/california-issues-first-awards-pioneering-program-designed-to-preserve-mobilehomes-safe-quality-option-affordable-homeownership

invest in repairs and upgrades whereas corporate owners or investors have little incentive to make the capital improvements so many parks need. To address this crisis, at least a dozen states have passed some form of a 'right to first refusal' law."

Arguments in Opposition: According to the Western Manufactured Home Communities Association and a coalition of opponents, "The right to dispose of property is a fundamental constitutional right which may not be taken without payment of just compensation. Moreover, under current law, nothing precludes resident groups or other housing entities from proactively approaching a park or portfolio with a pre-qualified loan package to acquire ownership. Specifically, the sale of private property between two parties remains a cornerstone of economic freedom in the United States. AB 2539 will involuntarily mandate a property owner to sell his or her properties to a public or private entity selected by differential treatment of the government. That requirement itself curbs the freedom of choice of buyer(s)."

Related Legislation:

AB 2926 (Kalra) of the current legislative session would add new requirements to the Preservation Notice Law, including requiring a seller of an assisted housing development to accept a bona fide offer to purchase the property from a qualified entity, among other changes. This bill is currently pending before this committee.

AB 2710 (Kalra) of 2022 would have established the Tenant and Community Opportunity to Purchase Act that would have given tenants, local public agencies, and mission-driven nonprofits a first opportunity to purchase rental housing properties when owners choose to put those properties up for sale, and a right to match an offer on those properties made by a third party. This bill died pending a hearing in the Assembly Judiciary Committee.

AB 519 (Voepel) of 2019 would have created a RO first right of refusal to purchase a park if the owner decided to sell or received a formal offer to purchase the park. This bill died pending a hearing in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Legal Aid of Sonoma County (Sponsor)
BASTA Universal
California Rural Legal Assistance Foundation
Centro Legal De La Raza
Coalition of California Welfare Rights Organizations
Disability Rights California
Fair Housing Advocates of Northern California
Golden State Manufactured-home Owners League, INC. (GSMOL)
Individuals - 58
Inner City Law Center
Justice in Aging
Leadership Counsel for Justice and Accountability
Legal Aid of Marin
MH Action
Mobile Home Residents Association/coalition

National Housing Law Project
North Bay Organizing Project
Petaluma Estates Homeowners Association
Public Advocates
Pueblo Serena Home Owners Alliance
Rise Economy
Santa Rosa Manufactured-home Owners Association
Sonoma County Mobilehome Owners Association
Sonoma County Tenants Union
Sonoma Valley Golden State Manufactured-home Owners League
Sonoma Valley Housing Group
Western Center on Law & Poverty, INC.

Opposition

Apartment Association of Greater Los Angeles
Cabrillo Management Corporation
California Association of Realtors
California Business Properties Association
California Mobilehome Parkowners Alliance
California Rental Housing Association
Security Investment Company, LLC
Western Manufactured Housing Communities Association

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2560 (Alvarez) – As Introduced February 14, 2024

SUBJECT: Density Bonus Law: California Coastal Act of 1976

SUMMARY: Applies Density Bonus Law (DBL) to the Coastal Act without limitation. Specifically, **this bill**:

1) Deletes the provision that states that nothing in DBL supersedes or in any way alters or lessens the application of the Coastal Act of 1976 (the Coastal Act).

2) Provides that any density bonus, concessions, incentives, or waivers of development standards, and parking ratios to which an applicant is entitled under DBL are permitted, notwithstanding the Coastal Act.

EXISTING LAW:

1) States that nothing in Density Bonus Law supersedes or in any way alters or lessens the application of the Coastal Act. (Government Code (GOV) Section 65915)

2) Provides that any density bonus, concessions, incentives, waivers or waivers of development standards, and parking ratios to which an applicant is entitled under density bonus law shall be permitted in a manner that is consistent with the Coastal Act. (GOV 65915)

3) Defines "concession or incentive" as:

    a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards 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 or for rents for the targeted units;

    b) Approval of specified compatible mixed-use zoning in conjunction with the housing project that will reduce the cost of development; and

    c) Other regulatory incentives or concessions proposed by the developer or the local government that results in identifiable and actual cost reductions to provide for affordable housing. (GOV 65915)

4) Requires a city, county, or city and county to grant a concession or incentive requested by an 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 necessary to support the affordable housing costs or rents for the affordable housing units required;

b) The concession or incentive would have a specific, adverse impact 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; or,

c) The concession or incentive would be contrary to state or federal law.

5) Requires cities and counties to grant a density bonus, based on a specified formula, when an applicant for a housing development of at least five units seeks and agrees to construct a project that will contain at least one of the following:

a) Ten percent of the total units of a housing development for lower-income households;

b) Five percent of the total units of a housing development for very low-income households;

c) A senior citizen housing development or age-restricted mobilehome park;

d) Ten percent of the units in a common interest development (CID) for moderate-income households, provided the units are available for public purchase;

e) Ten percent of the total units for transitional foster youth, disabled veterans, or homeless persons;

f) Twenty percent of the total units for lower-income students in a student housing development, as specified; or,

g) One hundred percent of all units in the development are for lower-income households, except that up to 20 percent of the units may be for moderate-income households. (GOV 65915)

6) Specifies that applicants for a density bonus can receive the following number of incentives or concessions:

a) One incentive or concession for projects that include:

i) At least 10 percent of the total units for lower-income households;

ii) At least five percent for very low-income households;

iii) At least 10 percent for moderate-income persons and families in a development in which units are for sale; or

iv) At least 20 percent of the units for lower-income students in a student housing development.

b) Two incentives or concessions for projects that include:

i) At least 17 percent of the total units for lower-income households;

ii) At least 10 percent for very low-income households; or

iii) At least 20 percent for moderate-income persons and families in a development in which units are for sale;

c) Three incentives or concessions for projects that include:

i) At least 24 percent of the total units for lower-income households;

ii) At least 15 percent for very low-income households; or

iii) At least 30 percent for moderate-income persons and families in CIDs; and

d) Four incentives or concessions for a project that include:

i) At least 16 percent of the total units for very low-income households; or

ii) At least 45 percent for moderate-income persons and families in CIDs; and

e) Five incentives or concessions for projects in which one hundred percent of all units are for lower-income households, except that up to 20 percent of the units may be for moderate-income households.

i) If the project is located within one-half mile of a major transit stop or is located in a very low vehicle travel area in a designated county, the applicant shall also receive a height increase of up to three additional stories, or 33 feet. (GOV 65915)

7) Establishes the Coastal Commission (Commission) in the Natural Resources Agency and requires the Commission to consist of 15 members (3 non-voting and 12 voting). (Public Resources Code (PRC) Section 31004)

8) Requires a person planning to perform or undertake any development in the coastal zone to obtain a coastal development permit (CDP) from the Commission or local government enforcing a local coastal program (LCP). (PRC 30600)

9) Defines "development" to mean, among other things, the placement or erection of any solid material or structure on land or in water. "Structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (PRC 30106)

10) Defines the "coastal zone" as the land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas, the coastal zone extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less. In developed urban areas, the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area. (PRC 30103)

11) Provides that nothing in the Coastal Act exempts local governments from meeting the requirements of state and federal law with respect to providing low- and moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any law hereafter enacted. (PRC 30007)

12) Provides that the Legislature finds and declares that it is important for the Commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low- and moderate-income in the coastal zone. (PRC 30604)

13) Requires the Commission to encourage housing opportunities for low-and moderate-income households. Provides that the Commission may not take measures that reduce the density of a housing project below the level allowed by local zoning ordinances and state density bonus law unless the Commission makes a finding that there is no feasible method to accommodate the density without creating a significant adverse impact on coastal resources. (PRC 30604)

14) Provides that the scenic and visual qualities of coastal areas must be considered and protected as a resource of public importance. Permitted development must be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government must be subordinate to the character of its setting. (PRC 30251)

15) Establishes a process for the streamlined approval of multifamily housing developments in certain instances and areas, including the streamlined approval of multifamily housing developments in the coastal zone, so long as the development is not on:

    a) An area of the coastal zone between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or the mean high tideline of the sea when there is no beach, whichever distance is greater;

    b) Areas not included in (a) that are on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff;

    c) An area of the coastal zone that is not subject to a certified local coastal program or certified land use plan;

    d) An area of the coastal zone that is vulnerable to five feet of sea level rise;

    e) A parcel in the coastal zone not zoned for multifamily housing; or,

    f) On, or within a 100 foot radius of wetland, or on prime agricultural land. (GOV 65913.4)

FISCAL EFFECT: None.

COMMENTS:

Author's Statement: According to the author, "The Coastal Zone is one of the most expensive housing markets in the country, rendering it unaffordable for the vast majority of Californians,

including service workers who make the coastal economy possible. The ballooning housing costs is a direct result of not building enough housing to meet the demand.

As a state program that has proven successful in creating more market rate and affordable housing across the state, Density Bonus Law serves as an important tool to resolve the severe housing shortage in our coastal areas. Density Bonus Law only applies in areas already zoned residential and allows developers to build additional units above the zoned amount in exchange for a certain percentage of income-restricted units. This ensures areas already zoned for housing are building more units than they would have otherwise while also dedicating a portion of them for moderate, low, and very-low income earners."

Statewide Housing Needs: According to the Department of Housing and Community Development's (HCD's) 2022 Statewide Housing Plan Update,[1] California's housing crisis is a half century in the making. After decades of underproduction, supply is far behind need and housing and rental costs are soaring. As a result, millions of Californians must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation, directly impacting quality of life in the state. One in three households in the state doesn't earn enough money to meet their basic needs. In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became experienced homelessness for the first time.[2]

To meet this housing need, HCD determined that California must plan for more than 2.5 million new homes, and no less than one million of those homes must be affordable to lower-income households, in the 6th Regional Housing Needs Allocation (RHNA). This represents more than double the housing needed in the 5th RHNA cycle. By contrast, housing production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.[3] As of April 5, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- 2.1 percent of the very low-income RHNA
- 4.8 percent of the low-income RHNA
- 4.8 percent of the moderate-income RHNA
- 12.7 percent of the above moderate-income RHNA

Density Bonus Law: Density Bonus Law (DBL) was originally enacted in 1979 as an incentive to encourage housing developers to produce affordable units at below market rates. In return for including a certain percentage of affordable units, housing developers receive the ability to add additional units for their project above the jurisdiction's allowable zoned density for the site (thus the term "density bonus").

The affordability units built using density bonus must be deed restricted for 55 years. Additionally, DBL specifies concessions and incentives around development standards (e.g., architectural, height, setback requirements) and reductions in vehicle parking requirements that

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[1] California Department of Housing and Community Development, *A Home for Every Californian*: 2022 Statewide Housing Plan. March 2022, https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136
[2] U.S. Department of Housing and Urban Development, Point in Time Counts. https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml

projects can receive to offset the cost of building affordable units. Both market rate and 100 percent affordable housing projects can use these provisions and all local governments are required to adopt a density bonus ordinance. However, failure to adopt an ordinance does not exempt a local government from complying with the requirements of DBL. DBL is a critical tool in the state's toolkit when it comes to reducing the price of affordable housing development, and incentivizing the construction of high density housing.

Development in the Coastal Zone: In 1976, the Legislature enacted the Coastal Act, mandating that coastal counties manage the conservation and development of coastal resources through a comprehensive planning and regulatory program. The area that constitutes the coastal zone is defined by California's Public Resources Code. In significant coastal estuarine, habitat, and recreational areas, the coastal zone extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less. In developed urban areas, the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area.

In partnership with coastal cities and counties, the Commission plans and regulates the use of land and water in the coastal zone. Development activities, which are broadly defined by the Coastal Act to include construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a special permit (CDP) from either the Commission or the local government with a certified LCP.

Eighty-five percent of the coastal zone is currently governed by LCPs drafted by cities and counties, and certified by the Commission. In these certified jurisdictions, local governments issue CDPs with detailed planning and design standards. There are 14 jurisdictions without LCPs – also known as "uncertified" jurisdictions – where the Commission is still the permitting authority for CDPs. One exception to this is the City of Los Angeles, which implements the Act directly by issuing CDPs. However, every city-issued CDP can be appealed to the Commission.

According to a 2015 analysis by the Legislative Analyst's Office, "a collection of factors drive California's high cost of housing. First and foremost, far less housing has been built in California's coastal areas than people demand. As a result, households bid up the cost of housing in coastal regions. In addition, some of the unmet demand to live in coastal areas spills over into inland California, driving up prices there too. Second, land in California's coastal areas is expensive. Homebuilders typically respond to high land costs by building more housing units on each plot of land they develop, effectively spreading the high land costs among more units. In California's coastal metros, however, this response has been limited, meaning higher land costs have translated more directly into higher housing costs. Finally, builders' costs—for labor, required building materials, and government fees—are higher in California than in other states. While these higher building costs contribute to higher prices throughout the state, building costs appear to play a smaller role in explaining high housing costs in coastal areas."

California's coast is a vital natural resource and delicately balanced ecosystem, as well as an important economic and social resource for the state. However, not all of the coastal area is a natural resource, and much of it is developed urban areas – including extremely wealthy coastal communities. SB 423 (Wiener), Chapter 778, Statutes of 2023 expanded upon SB 35 (Wiener), Chapter 366, Statutes of 2017, by allowing for by-right development in the coastal zone on sites

that local jurisdictions have identified, through their zoning, as appropriate for housing. The sites still need to meet all of the objective environmental criteria in SB 423, including that the site cannot be within a wetland, flood hazard area, protected habitat, or conservation easement.

Kalnel Gardens, LLC v. City of Los Angeles (3 Cal.App.5th 927 (2016)): In 2013, City of Los Angeles planning officials approved a proposed residential development in the Venice area. The project would have involved tearing down a two-story, three-unit apartment building and replacing it with a 15-unit housing development including five duplexes and five single-family homes. Pursuant to DBL, the developer was allowed to exceed the normal density restrictions for that location because two of the units would have been designated for very low-income households. DBL also entitled the developer to other zoning concessions, including a height variance. The City approved the project's vesting tentative tract map, including findings that the project complied with the City's General Plan as well as the Venice Specific Plan, and also approved a CDP under the Act.

In September 2013, a neighborhood group appealed the planning department's development approvals, including the CDP. The residents argued the project violated the Act because its height, density, setbacks, and other visual and physical characteristics were inconsistent with the existing neighborhood. The Planning Commission found that the development did not conform to the Act because its size, height, bulk, mass, and scale were incompatible with and harmful to the surrounding neighborhood and because the setbacks were too small. The developer appealed the Planning Commission's decision to the City Council, which denied the appeal.

The developer then brought an administrative mandate action against the City, alleging that it had violated the Housing Accountability Act, the Density Bonus Act, and the Mello Act. For the purpose of this analysis, the focus will be on the court's decision as it relates to state DBL and the Act. The trial court found that the density bonus, height and setback variations initially approved for the project were proper under the housing density statutes and other City zoning plans and regulations, including the Commission-approved Venice Land Use Plan. However, the trial court found that the housing density statutes were subordinate to the Act and that substantial evidence supported the Planning Commission's findings that the project violated the Act because it was visually out of step with the surrounding coastal community.

The developer appealed, and the appellate court affirmed the trial court's decision, holding that that state DBL is subordinate to the Act and that a project that violates the Act as the result of a density bonus may be denied on that basis. The court noted that "the Legislature appears to have struck a balance" between the Act and DBL "by requiring local agencies to grant density bonuses unless doing so would violate the [Act]."

It is worthwhile to examine the legislative history behind two bills relating to state density bonus law and the Act, both of which enacted laws referenced in the *Kalnel Gardens, LLC* case. AB 1866 (Wright), Chapter 1062, Statutes of 2002, made numerous changes to state DBL and state law relating to second units. According to this Committee's analysis of that bill, the sponsors contended that "there are many reasons for California's housing crisis, but one very important reason are the many constraints and obstacles imposed on housing by local governments." One of the provisions of DBL added by AB 1866 is that the granting of a concession or incentive shall not require or be interpreted, in and of itself, to require an LCP amendment. It also added the section of law this bill seeks to amend—Government Code Section 65915(m), providing that DBL does not supersede or in any way alter or lessen the effect or application of the Act.

AB 1866 was opposed by the Commission until August 6, 2002, shortly after amendments taken in the Senate added, among other provisions, what is now Government Code Section 65915(m). Prior to that amendment, in the Commission's opposition letter to the Senate Housing Committee, it stated "…[t]he Commission has historically taken the position that housing density bonus ordinances need to be consistent with other LCP and Coastal Act policies, and therefore should be formally amended into any applicable LCP." The Commission's August 7, 2002 letter to the author of AB 1866 states that the Commission voted to remove its opposition and take a neutral position on the bill because "the most recent amendments clarify that nothing in the bill is meant to supersede or lessen the application of the Coastal Act policies…" The Assembly Concurrence in Senate Amendments analysis, which appears to be the only legislative analysis of AB 1866 that directly addresses this amendment, describes the amendment as "[p]rovid[ing] that the requirements of the California Coastal Act shall not be superseded by any of the provisions in this measure."

One year later, SB 619 (Ducheny), Chapter 793, Statutes of 2003, made several changes to laws relating to the development of affordable housing, including requiring the Commission to encourage housing opportunities for low- and moderate-income households. It also provided that the Commission may not take measures that reduce the density of a housing project below the level allowed by local zoning ordinances and state DBL unless the Commission makes a finding that there is no feasible method to accommodate the density without creating a significant adverse impact on coastal resources. This Committee's analysis noted that the "author asserts that in spite of overwhelming need, many communities continue to resist new housing development, especially multifamily housing and higher density housing." According to the Senate Natural Resources Committee analysis, "California coast cities, with the current rate of growth, will have to support more housing. From an environmental perspective, coastal areas should consider increasing housing density and affordability…Affordable housing projects developed in coastal areas, as long as they are consistent with LCPs, are an environmental bonus, not a detriment."

In 2018, AB 2797 (Bloom), Chapter 904, further clarified the law in response to *Kalnel Gardens, LLC* to provide that any density bonus, concessions, incentives, waivers or reductions of development standards and parking ratios to which the applicant is entitled under density bonus law shall be accommodated, but in a manner that harmonizes DBL and the portions of the Act relating to Coastal Resources Planning and Management Policies. This bill would remove that requirement and apply DBL in the Coastal Zone notwithstanding the Coastal Act. As a result, the Commission or a local agency implementing the Act would be required to approve a developer's request for density, concessions and incentives, and parking reductions regardless of a conflict with the LCP.

In 2023, AB 1287 (Alvarez), Chapter 755, was approved by the Assembly Housing and Community Development Committee with language that would apply DBL to the Coastal Act without limitation. AB 1287 was subsequently amended in the Assembly Committee on Natural Resources to remove that provision.

In 2023, SB 423 (Wiener), Chapter 778, expanded upon SB 35 (Wiener), Chapter 366, Statutes of 2017, by allowing for by-right development in certain portions the coastal zone on sites that local jurisdictions have identified, through their zoning, as appropriate for housing.

Arguments in Support: According to the California Home Building Alliance, which includes SPUR – one of the bill's co-sponsors, AB 2560 "is a matter of fundamental fairness and equity.

Over the past several years, the State Legislature has passed many measures to address our housing affordability and availability crisis by facilitating housing production. Unfortunately, most of these laws have exempted the Coastal Zone altogether. There is now a growing consensus in the Legislature and among advocates that this is not equitable as these coastal communities are some of the most expensive, exclusive and segregated in the state and the local workforce is suffering greatly.

It is important to note that the Coastal Zone includes large swaths of urbanized and already developed interior areas far inland from the coastline and beaches where new housing is needed and would be appropriate including in San Diego, Santa Monica, Los Angeles, Santa Cruz, San Francisco, Arcata and Eureka, among others. State density bonus law was first enacted by the Legislature several decades ago to ensure that affordable and mixed-income housing developments are feasible even in the highest-cost areas of our state. Furthermore, these bonuses are only available on sites that have already been zoned for residential use by the local jurisdiction. The legislation in no way endangers coastal resources but rather will provide greater access to much-needed housing in the coastal area."

Arguments in Opposition: According to the California Cities for Local Control, "AB 2560 significantly weakens the environmental protections heretofore provided by the coastal act. The Legislature's burgeoning assault on coastal zone protections, especially in an era when sea level rise is inevitable, defies reason."

Double Referred: This bill was also referred to the Assembly Committee on Natural Resources, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council (Sponsor)
Circulate San Diego (Sponsor)
San Francisco Bay Area Planning and Urban Research Association (Sponsor)
AARP
Abundant Housing LA
American Planning Association, California Chapter
Associated General Contractors
California Apartment Association
California Building Industry Association
California Community Builders
California Community Builders
California Housing Partnership Corporation
California Yimby
City of Sn Diego
CivicWell
East Bay Yimby
Greenbelt Alliance
Grow the Richmond
Housing Action Coalition
Housing Action Coalition
How to ADU

LeadingAge California
Monterey Bay Economic Partnership
Mountain View Yimby
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing - Orange County
People for Housing Orange County
Progress Noe Valley
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
Streets for All
Streets for People
Urban Environmentalists
Ventura County Yimby
YIMBY Action

Opposition

California Cities for Local Control
California Contract Cities Association
Livable Ventura, INC
Mission Street Neighbors
New Livable California Dba Livable California
Newport Beach; City of
Save Lafayette

Oppose Unless Amended

Azul
California Coastal Protection Network
Center for Biological Diversity
Defenders of Wildlife
Endangered Habitats League
Environmental Defense Center
Environmental Action Committee of West Marin (EAC)
Environmental Center of San Diego
Orange County Coastkeeper
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Puvunga Wetlands Protectors
Sierra Club of California
SoCal 350 Climate Action
The Surfrider Foundation

Analysis Prepared by: Dori Ganetsos / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2580 (Wicks) – As Amended March 19, 2024

SUBJECT: Historical resources

SUMMARY: Adds information about a local government's historic preservation practices and policies to the constraints analysis required by housing element law, and requires a local government to provide in its Annual Progress Report (APR) a list of all historic designations listed on specified registers of historic places in the past year, including an assessment of how those designations affect the ability of the local government to meet its housing needs.

EXISTING LAW:

1) Requires each city and county to adopt a housing element, which must contain specified information, programs, and objectives, including:

    a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality's existing and projected housing needs for all income levels; an inventory of land suitable and available for residential development; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need, among other things;

    b) A statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and

    c) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element, including actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the local government's share of the regional housing need for each income level that could not be accommodated on sites identified in the sites inventory without rezoning, among other things. (Government Code (GC) Section 65583(a)-(c))

2) Requires a local government's inventory of land suitable for residential development to be used to identify sites throughout the community that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels. Defines "land suitable for residential development" to include:

    a) Vacant sites zoned for residential use;

b) Vacant sites zoned for nonresidential use that allows residential development;

c) Residentially zoned sites that are capable of being developed at a higher density, including sites owned or leased by a jurisdiction; and

d) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary and as specified. (GC 65583.2(a))

3) Requires a planning agency to provide an APR to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development (HCD) by April 1 of each year that includes certain information, including:

a) The progress in meeting its share of the regional housing needs, including the need for extremely low-income households, and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing included in the housing element;

b) The number of housing development applications received in the prior year, including whether each housing development application is subject to a ministerial or discretionary approval process;

c) The number of units included in all development applications in the prior year;

d) The number of units approved and disapproved in the prior year;

e) A listing of sites rezoned to accommodate that portion of the city or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the housing element's site inventory and any sites that may have been required to be identified under the No Net Loss Zoning law;

f) The number of housing units demolished and new units of housing, including both rental housing and for-sale housing, 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 that each housing unit satisfies;

g) Specified information related to density bonus applications; and

h) Specified information related to Affordable Housing and High Road Jobs Act of 2022 applications. (GC 65400(a)(2)(A)-(M))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 2580 enhances the transparency of the interaction between historic preservation and housing policy. It does so by requiring historic preservation policies and practices to be evaluated as potential constraints on housing in the Housing Element process, and ensures that cities disclose to HCD any newly adopted historical designations. By increasing this transparency, AB 2580 can help balance development of critically-needed housing production with protecting valuable historic resources."

California's Housing Crisis: California is in the midst of a severe housing crisis. Over two-thirds of low-income renters are paying more than 30% of their income toward housing, a "rent burden" that means they have to sacrifice other essentials such as food, transportation, and health care.[1] In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became homeless for the first time.[2] The crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership's (CHP) Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 687,000 available and affordable rental units in the state. Over three-quarters of the state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50% of their income toward rent each month. CHP estimates that the state needs an additional 1.3 million housing units affordable to very low-income Californians to eliminate the shortfall.[3] By contrast, production in the past decade has been under 100,000 housing units per year – including less than 10,000 units of affordable housing per year.[4]

Historic Preservation: According to the US National Park Service, historic preservation is "a conversation with our past about our future," meaning it allows us to convey our understanding of the past to future generations. The National Historic Preservation Act (NHPA), which established a national preservation program and a system of procedural protections to identify and protect historic resources, was signed into law in 1966 as a result of the significant infrastructure and urban renewal projects taking place in the postwar era.[5] Many cultural sites and archaeological resources were destroyed or at risk of alteration prior to enactment of the NHPA, so the Act took a multi-pronged approach to identifying, evaluating, and protecting historic and culturally significant properties. It established the National Register of Historic Places, which acts as the official federal inventory of historic sites across the country, and established a review process for federal agencies to consider the effects of their activities or programs on those historic properties. State and local governments, Native American tribes, and other cultural organizations also had roles and responsibilities under the Act, and California's Office of Historic Preservation, under the Director of California State Parks, implements our state's obligations under the NHPA.[6]

Local governments and communities have an extremely important role in the historic preservation context as well, often identifying ways to adaptively reuse or preserve historic resources in local land use planning decisions. According to the latest version of California's Statewide Historic Preservation Plan, "Over the last 20 years or so, the scope of historic preservation planning practice has expanded beyond being concerned primarily with understanding the nature and significance of historic and cultural resources to integrating historic preservation into the broader land use planning and decision-making processes, and incorporating historic preservation into other social and economic concerns such as

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[1] https://chpc.net/housingneeds/
[2] https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] https://chpc.net/housingneeds/
[4] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml
[5] https://www.nps.gov/subjects/archeology/national-historic-preservation-act.htm
[6] https://ohp.parks.ca.gov/?page_id=27961

sustainability, revitalization and community development, affordable housing, disaster preparedness planning and recovery, and environmental quality."[7]

***Adoption and Implementation of Housing Elements*:** One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan for new housing. Such planning is required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most of the high population parts of the state, and five years in areas with smaller populations. Localities must adopt a legally valid housing element by their statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including an accelerated deadline for completing rezoning, exposure to the "builder's remedy," public or private lawsuits, financial penalties, potential loss of permitting authority, or even court receivership.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region's housing needs allocation (RHNA). To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element. Depending on whether the jurisdiction met its statutory deadline for housing element adoption, it will have either one year (if it failed to meet the deadline) or three years (if it met the deadline) from its adoption deadline to complete that rezoning program.

It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment locally for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will be slow to build. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and that it not engage in exclusionary zoning practices.

One necessary component of the housing element is an assessment of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvement, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development. This analysis must also demonstrate local efforts to remove governmental constraints that hinder the development of housing at the income levels required by the RHNA process, as well as housing for people experiencing homelessness.

This bill would require the constraints analysis to include an assessment of the local government's historic preservation practices and policies, to push local governments to evaluate

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[7] California's Statewide Historic Preservation Plan 2019-2023 Update, https://ohp.parks.ca.gov/pages/1069/files/CAStatePlan_2019-2023_FINAL.pdf

whether they are striking the right balance between the preservation of valuable historic resources and the production of essential new housing in their communities.

Annual Progress Reports: Current law requires all local jurisdictions to provide housing information annually to HCD via the APR, including the following information from the prior year and/or for the current eight-year housing element cycle:

- The number of housing development applications received, and whether those applications are subject to ministerial or discretionary approval;
- The number of units included in all development applications;
- The number of units approved and disapproved;
- For each income category, the number of net new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, a building permit, or a certificate of occupancy;
- A unique site identifier (such as assessor's parcel number) for each entitlement, building permit, or certificate of occupancy;
- The number of applications submitted under the Affordable Housing and High Road Jobs Act of 2022; and
- The overall progress in meeting its share of RHNA.

The APR also includes a housing element portion, which local governments must use to describe their progress in meeting their RHNA, local efforts to remove governmental constraints identified in their housing element, and actions taken toward completion of their housing element programs and the status of their compliance with the deadlines imposed in the housing element.

This bill would also require the APR to include a list of all historic designations listed on the National Register of Historic Places, the California Register of Historic Resources, or a local register of historic places by the local government in the past year, and further require that list to include an assessment of how those designations affect the ability of the locality to meet its housing needs. The committee may wish to consider whether the APR is the appropriate place to require a narrative-form analysis of how historic designations affect the locality's ability to meet its RHNA, as the bulk of information reported in the APR is quantitative and HCD's open data tools display information in many charts and graphs with data filters, rather than blocks of text.

Arguments in Support: According to California YIMBY, the bill's sponsor, "Historic preservation plays a vital role in protecting California's architectural heritage and conserving places of historical significance. Historic districts and buildings designated as 'historically significant' receive special protections that subject new developments, building renovations, and design changes to a more rigorous and thorough review process to protect the integrity of historic elements. However, the ability to designate a building as 'historically significant' or creating a new historic district often encourages abuse by individuals and small local groups who seek to prevent more inclusive and affordable housing development. There are also currently no measures in place to ensure local governments balance legitimate historic preservation with potential impacts on a community's ability to meet its housing needs. AB 2580 would require local jurisdictions to monitor how new historic designations could impact their ability to meet housing needs under existing state law and report new historic buildings and districts to the Department of Housing and Community Development (HCD) during the Annual Progress Report of the Regional Housing Needs Assessment process."

Arguments in Opposition: None on file.

Committee Amendments: Staff recommends the bill be amended as follows:

- Strike the assessment of how new historic designations affect the ability of a locality to meet its housing needs from the APR reporting, and instead move that component into the governmental constraints analysis of the housing element; and
- In the APR, when localities are required to report a list of all new historic designations, also require the report to include information regarding the status of any housing development projects that were proposed for the sites newly designated as historic, including whether the projects have been entitled, whether any building permits have been issued for the project, and the number of units in the projects.

Government Code Section 65400(a)(2)(N). A list of all historic designations listed on the National Register of Historic Places, the California Register of Historic Resources, or a local register of historic places by the city or county in the past year ***and the status of any housing development projects proposed for the new historic designations***, including ~~an assessment of how those designations affect the ability of the city or county to meet its housing needs.~~ ***all of the following:***

1) ***Whether the housing development project has been entitled.***
2) ***Whether a building permit has been issued for the housing development project.***
3) ***The number of units in the housing development project.***

Section 65583(a)(5). An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, local processing and permit procedures, historic preservation practices and policies ***and an assessment of how existing and proposed historic designations affect the locality's ability to meet its share of the housing need pursuant to paragraph (1) of subdivision (a)***, and any locally adopted ordinances that directly impact the cost and supply of residential development. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7).

Related Legislation:

AB 2728 (Gabriel) of the current legislative session would make changes to housing element and APR requirements related to the production of housing under the Affordable Housing on Faith and Higher Education Lands Act of 2023, among other things. This bill is currently pending before this committee.

AB 2144 (Grayson) of the current legislative session adds evidence of compliance with existing law requirements for local governments to post fee schedules and other information on their websites to the list of information local governments must provide in their APR. This bill recently passed out of this committee on a 9-0 vote and is pending before the Assembly Committee on Local Government.

AB 2667 (Santiago) of the current legislative session would require the APR to include the number of housing units approved and disapproved in the prior year that are located within an opportunity zone, among other changes. This bill is currently pending before this committee.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California YIMBY (Sponsor)
Abundant Housing LA
California Community Builders
Circulate San Diego
House Sacramento
Housing Action Coalition
John Ebneter, Planning Commissioner, City of San Mateo
Mountain View YIMBY
Noelia Corzo, San Mateo County Supervisor (District 2)
One San Mateo
San Mateo City Council Member Amourence Lee
San Mateo City Council Member Rick Bonilla
Seema Patel, Planning Commissioner, City of San Mateo
SPUR
Supervisor Warren Slocum
Uma Krishnan, President, San Mateo County Asian American Pacific Islander Alliance
Willy's LLC
YIMBY Action

Opposition

None on file.

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2597 (Ward) – As Amended April 1, 2024

SUBJECT: Planning and zoning: revision of housing element: Southern California Association of Governments

SUMMARY: Revises the housing element statutory adoption deadlines for the seventh and subsequent housing element cycles for local governments within the regional jurisdiction of the Southern California Association of Governments (SCAG), except for the County of Los Angeles and all local governments within the County of Los Angeles. Specifically, **this bill** provides that local governments, as specified, that are within the regional jurisdiction of SCAG and that have a compliant housing element as of the adoption of the second regional transportation plan (RTP) update, as specified, excluding the County of Los Angeles and all local governments within the County of Los Angeles, must adopt a housing element 30 months after the adoption of every second RTP update for the seventh revision and subsequent revisions of the housing element, or as otherwise provided in law.

EXISTING LAW:

1) Requires each city and county to adopt a housing element, which must contain specified information, programs, and objectives, including:

    a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality's existing and projected housing needs for all income levels; an inventory of land suitable and available for residential development; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need, among other things;

    b) A statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and

    c) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element, including actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the local government's share of the regional housing need for each income level that could not be accommodated on sites identified in the sites inventory without rezoning, among other things. (Government Code (GC) Section 65583(a)-(c))

2) Requires each city, county, city and county to revise its housing element according to the following due dates:

a) For local governments described in specified law, 18 months after adoption of every second RTP update, provided that the deadline for adoption is no more than eight years later than the deadline for adoption of the previous eight-year housing element, or as otherwise provided in law;

b) For all other local governments, at five-year intervals after dates in specified law; and

c) If a metropolitan planning organization (MPO) or a regional transportation planning agency subject to the five-year revision interval in b) elects to adopt a RTP not less than every four years under specified law after June 1, 2009, all local governments within the regional jurisdiction of that entity must adopt the next housing element revision no later than 18 months after adoption of the first RTP plan update following the election. Subsequent revisions must be due 18 months after adoption of every second RTP update, provided that the deadline for adoption is no more than eight years later than the deadline for adoption of the previous eight-year housing element. (GC 65588(e)(3)(A)-(C))

3) Requires the MPO or a regional transportation planning agency for a region that has an eight-year revision interval pursuant to 2)a) to notify the Department of Housing and Community Development (HCD) and the Department of Transportation (Caltrans) in writing of the estimated adoption date for its next RTP update at least 12 months before the estimated adoption date. (GC 65588(e)(5))

4) Requires Caltrans to maintain and publish on its website a current schedule of the estimated RTP adoption dates, and requires HCD to maintain and publish on its website a current schedule of estimated and actual housing element due dates. (GC 65588(e)(5))

5) Requires each council of governments (COG) to publish on its website the estimated and actual housing element due dates, as published by HCD, for the jurisdictions within its region and to send a notice of these dates to interested parties. (GC 65588(e)(5))

6) Provides that, for purposes of the regional housing need determination, as specified, the date of the next scheduled revision of the housing element is deemed to be the estimated adoption date of the RTP update described in the notice provided to Caltrans plus 18 months. (GC 65588(e)(5))

7) Requires HCD to determine the existing and projected housing need for each region at least two years prior to the scheduled revision of the housing element in 2) above, and requires the appropriate COG, or HCD for cities and counties without a COG, to adopt a final regional housing needs plan that allocates a share of the regional housing need to each city, county, or city and county at least one year prior to the scheduled revision for the region in 2) above. (GC 65584(b))

8) Requires HCD, at least 26 months prior to the scheduled revision of the housing element in 2) above and prior to developing the existing and projected housing need for a region, to meet and consult with the COG regarding the assumptions and methodology to be used by HCD to determine the region's housing needs, as specified. (GC 65584.01(b)(1))

9) Requires each COG or delegate subregion, at least two years before a scheduled revision of the housing element in 2), to develop, in consultation with HCD, a proposed methodology

for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or subregion. (GC 65584.04(a))

10) Requires each COG and delegate subregion, at least one and one-half years before the scheduled revision of the housing element in 2) above, to distribute a draft allocation of regional housing needs to each local government in the region or subregion and HCD, and publish the draft allocation on its website. (GC 65584.05(a))

11) Requires a local government, at least 90 days prior to the adoption of a revision of its housing element pursuant to 2) above, or at least 60 days prior to the adoption of a subsequent amendment to the housing element, to submit a draft element to HCD. HCD must review the draft and report its written findings within 90 days of its receipt of the first draft submittal or within 60 days of its receipt of a subsequent draft, unless certain conditions are met. (GC 65585(b)(1)-(3))

12) Requires HCD, in its written findings pursuant to 11), to determine whether the draft element or amendment substantially complies with housing element law. (GC 65585(d))

13) Requires HCD to review adopted housing elements or amendments and report its findings to the local government within 60 days of adoption. (GC 65585(h))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 2597 is a good government measure intended to help local governments, interested stakeholders, and HCD have more capacity and time to produce, edit, and review the close to 200 housing elements that are simultaneously due on each housing element cycle for jurisdictions within the Southern California Association of Governments. The bill does this by creating two 'phases' of housing element due dates for SCAG – so that the workload spike is much more manageable for all parties and good quality housing elements can be drafted, reviewed by HCD, and adopted with less strain in the future."

California's Housing Crisis: California is in the midst of a severe housing crisis. Over two-thirds of low-income renters are paying more than 30% of their income toward housing, a "rent burden" that means they have to sacrifice other essentials such as food, transportation, and health care.[1] In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became homeless for the first time.[2] The crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership's (CHP) Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 687,000 available and affordable rental units in the state. Over three-quarters of the state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50% of their income toward rent each month. CHP estimates that the state needs an additional 1.3 million housing units affordable to

[1] https://chpc.net/housingneeds/
[2] https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html

very low-income Californians to eliminate the shortfall.[3] By contrast, production in the past decade has been under 100,000 housing units per year – including less than 10,000 units of affordable housing per year.[4]

***Adoption and Implementation of Housing Elements*:** One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan for new housing. Such planning is required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most of the high population parts of the state, and five years in areas with smaller populations. Localities must adopt a legally valid housing element by their statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including exposure to the "builder's remedy" as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or even court receivership. Localities that do not adopt a compliant housing element within 120 days from their statutory deadline also must complete any rezones within one year of their deadline, rather than the three years afforded to on-time adopters.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region's housing needs allocation (RHNA), which is a figure determined by HCD through a demographic analysis of housing needs and population projections. HCD establishes its determination of each COG's regional housing targets across the state for the next five- or eight-year planning cycle. Each COG (or in some areas, HCD acting directly as COG) then sub-allocates the RHNA to each local government within the COG's jurisdiction, and in turn each jurisdiction uses its housing element to show how it will accommodate that number of new housing units, split out by income level and with a focus on certain special needs housing types and on affirmatively furthering fair housing.

It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will be slow or extremely difficult to build. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and not engage in exclusionary zoning practices.

SCAG in Relation to Other COGs: Housing element adoption is staggered across the state depending on certain timelines for different COGs. SCAG is by far the largest COG in the state, encompassing six counties – Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura – and 191 cities in an area covering more than 38,000 square miles.[5] These 197 jurisdictions all must adopt a legally compliant housing element based on the timelines outlined in current law, meaning all jurisdictions in SCAG have the same housing element due date – 18

[3] https://chpc.net/housingneeds/
[4] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml
[5] https://scag.ca.gov/about-us

months after the adoption of a second RTP update for the planning period, which HCD estimates for the seventh cycle housing element will be October 15, 2029.[6]

HCD must review a first draft housing element from every single jurisdiction in the state, and provide written findings of its feedback on whether the draft plan complies with a comprehensive list of requirements in housing element law. HCD has 90 days to review first drafts, and often second or subsequent drafts are necessary to make changes or rewrite portions of some elements. HCD has 60 days to review those subsequent drafts and provide additional feedback. With 197 jurisdictions all aiming to submit draft housing elements roughly 90 days prior to the same due date, this represents a tremendous workload "spike" for HCD to timely review and deliver written feedback by its own 90-day deadlines and may affect the quality of feedback able to be provided. Additionally, there are many members of the public and stakeholder groups with an interest in reviewing draft housing elements and the same time crunch negatively affects their ability to thoroughly review these lengthy documents and generate comments and suggestions for local governments to consider. Jurisdictions waiting for feedback from HCD might receive more individualized technical assistance and deeper feedback on their drafts if this workload were more evenly distributed, which could potentially also reduce the need for multiple subsequent draft housing elements.

This bill intends to smooth out this workload spike by creating two phases of housing element adoption due dates for SCAG jurisdictions in future cycles: Los Angeles County and jurisdictions within Los Angeles County would remain on the current 18-month adoption period (effectively one year after RHNA suballocations are assigned), while all other jurisdictions in SCAG would have 30 months after the second RTP (or effectively two years after RHNA suballocations are assigned) to adopt a compliant housing element. Any jurisdictions outside of Los Angeles County that do not have a compliant housing element as of the adoption of the second RTP would not be able to take advantage of this longer drafting and preparation window, and would instead remain on the 18-month cycle.

Los Angeles County contains 88 incorporated cities and is the most populated county both in California and in the entire United States. These 88 cities plus Los Angeles County itself represent about 45% of the total number of jurisdictions within SCAG. In addition, the City of Los Angeles is the most populated city in the state and has a commensurately large and complex housing element. Splitting SCAG into these two phases is thus intended to more evenly distribute housing element workload.

Arguments in Support: None on file.

Arguments in Opposition: None on file.

Related Legislation:

AB 1886 (Alvarez) of the current legislative session provides that a housing element or amendment is considered to be substantially compliant with housing element law when the local agency has adopted a housing element or amendment and HCD or a court of competent

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[6] https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-and-regional-housing-needs-determination-schedule

jurisdiction determines the adopted housing element or amendment to be in substantial compliance, as specified. This bill is currently pending before this committee.

AB 2023 (Quirk-Silva) of the current legislative session creates a rebuttable presumption of invalidity in any legal action challenging a local government's action or failure to act if HCD finds that the action or failure to act does not substantially comply with the local government's adopted housing element or housing element obligations, among other changes. This bill is currently pending before this committee.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2665 (Lee) – As Introduced February 14, 2024

SUBJECT: Housing finance: Mixed Income Revolving Loan Program

SUMMARY: Establishes the Mixed Income Revolving Loan Program (the Program) at the California Housing Finance Agency (CalHFA) to provide zero-interest construction loans to qualifying infill housing developers for the purpose of constructing deed-restricted affordable housing. Specifically, **this bill**:

1) Requires CalHFA to formulate a program for the development of multifamily housing projects where a portion of the housing units are set aside to ensure affordability.

2) Requires the program to solicit applications from private developers, nonprofit developers, public housing authorities, and other public agencies for the construction and ownership of housing units.

3) Requires a developer seeking assistance from the Program to have both of the following:

    a) At least 20% of the development of housing units to be affordable housing for households earning 50 percent or less of the area median income (AMI) adjusted for household size; and

    b) At least an additional 10% of the development of housing units to be affordable to households earning 80% or less of the AMI adjusted for household size.

4) Requires CalHFA to administer the Program and promulgate rules and regulations deemed necessary for the administration and implementation of the provisions of this bill.

5) Provides that the Program shall be created upon appropriation by the Legislature.

EXISTING LAW:

1) SB 2 (Atkins) Chapter 364, Statutes of 2017 establishes a recording fee on certain real estate transactions and directs 15% of the funds generated from the Building Homes and Jobs Act toward creating mixed income multifamily residential housing for lower to moderate income households. (Health and Safety Code (HSC) Section 50470)

2) Authorizes CalHFA to make and publish rules and regulations to make development loans, construction loans, property improvement loans, and mortgage loans. (HSC 51101)

3) Allows the following types of housing developments and residential structures to be eligible for mortgage loans made with the proceeds of bonds:

    a) Housing developments and residential structures financed with bonds of the agency guaranteed by the federal government;

b) Housing developments and residential structures financed with bonds of the agency that are guaranteed, or the time payment of principal and interest of which is insured, by an agency of the state or by a private insuring entity authorized to engage in that business;

c) Housing developments and residential structures, the mortgage loans on which presently are or are expected to be guaranteed, insured, or coinsured by the federal government;

d) Housing developments and residential structures, the bonds or mortgage loans on which are presently, or are expected to be, insured or guaranteed in whole or in part by an agency of the state, including the California Housing Finance Agency, a political subdivision of the state, or by a private insuring entity authorized to engage in that business, or by any combination thereof, in percentages determined by the agency; and

e) Housing developments and residential structures financed by a loan made by the agency to a qualified mortgage lender, if both of the following conditions are met:

    i) The loan to the qualified mortgage lender is a general obligation of the mortgage lender; and

    ii) The qualified mortgage lender is a member of, or a subsidiary of a member of, the Federal Deposit Insurance Corporation or of the Federal Savings and Loan Insurance Corporation.

f) Housing developments and residential structures financed by tax-exempt bonds for which a bond reserve fund is created which complies with the terms and conditions of the agreement or agreements with agency bondholders. (HSC 51104)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "In order to fund the construction of affordable housing for Californians of all incomes, AB 2665 will establish a revolving loan program in the California Housing Finance Agency. By establishing a program that provides zero-interest construction loans to qualified developers for constructing mixed-income affordable housing, the state can continue to work towards its housing goals regardless of budget or financing conditions."

CalHFA: CalHFA is the state's affordable housing bank. CalHFA borrows money from the private financial market at below-market interest rates by issuing tax-exempt revenue bonds. CalHFA passes these interest rate savings on to low- and moderate-income first-time homebuyers and affordable rental housing developers by offering below market-rate mortgages. These bonds are backed only by CalHFA revenues and not by the state General Fund. CalHFA also provides downpayment assistance in the form of deferred, "silent second" mortgages (i.e., the borrower makes no monthly payments but repays the loan at sale or refinance) for families who need extra assistance achieving homeownership. CalHFA receives 15% of the funds generated by SB 2 (Atkins, Chapter 364, Statutes of 2017) for the Mixed Income Program (MIP) for the purposes of creating mixed-income, multifamily residential housing for lower- or moderate-income households. The 2019-2020 Budget provided an additional one-time $500 million investment into the MIP program. CalHFA also received $150 million for Home

Purchase Assistance from Proposition 1 bond funds to provide first and junior loan options for low- to moderate-income families, including low to zero interest rate down payment assistance loans. In September 2021, CalHFA launched a new program to help homeowners finance ADUs. The ADU Grant Program will provide qualified homeowners up to $25,000 to help cover construction costs, with a focus on homeowners with low incomes, low equity in their homes, and those residing in low-income areas. The 2022-23 budget also provided $500 million for CalHFA to create and administer the California Dream for All homebuyer aid program. This program will provide shared appreciation loans to qualified low- and moderate-income, first-time homebuyers.

Construction loans: Lenders view construction loans as risker than conventional loans and charge higher interest rates. Interest rates for construction loans are currently at 6%. To combat inflation, the Federal Reserve has set higher interest rates and though the Federal Reserve has signaled it may adjust interest this year, inflation continues to be high. This bill would create a new program at CalHFA to provide 0% construction loans to developers that include at least 30% of the units at an affordable cost, with at least 20% of the units affordable housing for households earning 50% or less of AMI and at least an additional 10% of units affordable to households earning 80% or less of AMI. The other 70% of the units in the development could charge market-rate rents. The program would be available to private developers, non-profit developers, housing authorities, and other public agencies. State affordable housing finance programs provide long term loans or equity investments in housing that is affordable to households that make 80% of AMI or less. This program, if created, would fund a development where a portion of the units are market rate. These projects likely would not be competitive for traditional state affordable housing funding which favors affordable housing with deeper per unit affordability and higher levels of overall affordability in a development. If market rate developers utilize this funding, without any other state subsidy, the state would benefit from the 30% per development requirement for affordable housing. To qualify, the affordable units should be deed restricted for 55 years, consistent with other affordable housing programs and other state and local policies (local inclusionary, Density Bonus Law, by right streamlining). The committee may wish to amend the bill to clarify this requirement.

Efforts to Consolidate and Streamline State Housing Programs: The state provides funding for affordable housing production through Low Income Housing Tax Credits and long-term loans in that infuse equity into the development. In the past few years, the Legislature has attempted to streamline affordable housing funding, to reduce the complexity and time for developers. Affordable housing developers often cite the need to apply for multiple programs to fund one affordable housing development as a cost driver to development. State housing programs are administered by HCD, CalHFA, the Tax Credit Allocation Committee (TCAC), and the Strategic Growth Council. In an effort to streamline funding, the Legislature passed AB 484 (Daly), Chapter 434, Statutes of 2020 which required HCD to create a combined notice of funding availability (NOFA), commonly called the Super NOFA, for multiple overlapping programs that fund multi-family rental housing for lower-income families. Last year, AB 519 (Schiavo), Chapter 742 required TCAC, HCD, and CalHFA to convene an Affordable Housing Finance Workgroup to make recommendations to develop a common application process for the programs they administer on or before January 1, 2027.

Budget Challenges: Although final revenues are not in, the Legislative Analyst's Office estimates that the state is facing a $58 billion budget deficit. The Governor's January budget proposes to cut $1.2 billion in existing budget commitments to affordable housing programs,

including eliminating $500 million for the state Low Income Housing Credit, a core program necessary to fund affordable multi-family housing programs. The last voter-approved housing bond, Proposition 1 from 2018, provided $3 billion for various affordable housing programs, which has fully spent down.

Arguments in Support: According to the California Apartment Association, "In an effort to meet the demand for affordable housing for lower income households, the 2023-2024 budget provided over $3 billion in funding for housing and homelessness programs. However, there are other models of providing deed restricted affordable housing for low income families that don't require capital outlays from the state's coffers. States such as Maryland, New York and Rhode Island have experimented with publicly funded below market construction loans to spur development. AB 2665 would be California's approach to incentivize developers to break ground on new housing projects by easing their initial capital expense."

Arguments in Opposition: None on file.

***Committee Amendments*:**

- Require affordable housing created by the program in this bill to be deed restricted for 55 years.

***Related Legislation*:**

AB 1053 (Gabriel) of 2023 would have allowed an applicant for funding to request a construction loan rather than long term funding. This bill was held in Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Community Builders
Culver City Democratic Club
East Bay YIMBY
Grow the Richmond
Housing Action Coalition
How to ADU
LeadingAge California
League of California Cities
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing Orange County
Progress Noe Valley
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY

Santa Monica Democratic Club
Santa Rosa YIMBY
South Bay YIMBY
Southside Forward
Streets for People
Urban Environmentalists
Ventura County YIMBY
YIMBY Action

Opposition

None on file.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2674 (Schiavo) – As Introduced February 14, 2024

SUBJECT: The California Affordable and Foster Youth Housing Finance Innovation Act

SUMMARY: Requires the California Housing Finance Agency (CalHFA) to establish the California Affordable and Foster Youth Housing Finance Innovation Program (the program) to provide loan guarantees, secured loans, or lines of credit for housing developments that provide a percentage of housing for former or current foster youth. Specifically, **this bill**:

1) Includes the following definitions:

   a) "Agency" means the California Housing Finance Agency;

   b) "Credit instrument" means a secured loan guarantee, secured loan, or line of credit authorized to be made under this chapter with respect to a qualified project;

   c) "Eligible costs" means the costs paid or incurred on or after January 1, 2025, for the construction, acquisition, and renovation of a qualified project;

   d) "Financial institution" means regulated banking organizations, including national banks and trust companies authorized to conduct business in California and state-chartered commercial banks, trust companies, credit unions, and savings and loan associations;

   e) "Line of credit" means an agreement entered into by the agency with an obligor to provide a direct loan at a future date upon the occurrence of certain events;

   f) "Loan guarantee" means any guarantee or other pledge by the agency to pay for all or a part of the principal and interest on a loan or other debt obligation issued by a financial company or financial institution to a qualified housing sponsor for eligible costs to construct, acquire, and renovate a qualified project;

   g) "Qualified housing sponsor" means any individual, joint venture, partnership, limited partnership, trust, corporation, limited equity housing cooperative, cooperative, local public entity, duly constituted governing body of an Indian reservation or rancheria, tribally designated housing entity, nonprofit organization, or other legal entity, or any combination thereof, qualified to either own, construct, acquire, or rehabilitate a housing development, or a residential structure other than an owner-occupied single unit whether for profit, nonprofit, or organized for limited profit, that is authorized to conduct business in the state, and has its primary business location within the boundaries of this state;

   h) "Qualified loan" means a loan or a portion of a loan made by a financial company or financial institution to a qualified housing sponsor for eligible costs to construct, acquire, or renovate a qualified project;

i) "Secured loan" means a direct loan or other debt obligation issued by an obligor and funded by the agency to a qualified housing sponsor for eligible costs to construct, acquire, or renovate a qualified project;

j) "Qualified project" means new construction of dwelling units, the conversion of units from nonresidential to residential, or the acquisition and rehabilitation of motels, hotels, hostels, or other sites and assets, including apartments or homes, and other buildings with existing uses that could be converted to permanent or interim housing. A qualified project results in dwelling units that meet the following conditions:

i) A minimum of 25% of the total number of dwelling units, except for developments authorized pursuant to specified law, are reserved for tenants who are current or former foster youth who are 18 to 25 years of age, inclusive, and qualify for one of the following programs:

I) The Independent Living Program, established pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272);

II) The Transitional Housing Placement Program for Non-Minor Dependents, as described in subdivision (c) of Section 16522.1 of the Welfare and Institutions Code;

III) The Transitional Housing Program-Plus, pursuant to subdivision (s) of Section 11400 of the Welfare and Institutions Code and paragraph (2) of subdivision (a) of Section 11403.2 of the Welfare and Institutions Code;

IV) Assistance available to eligible youth pursuant to the Family Unification Program, authorized under Section 8(x) of the United States Housing Act of 1937 (Public Law 75–896); or

V) The federal Foster Youth to Independence Initiative, administered by the United States Department of Housing and Urban Development.

ii) A minimum of 25% of the total number of dwelling units are reserved for tenants who are lower income households, as specified.

2) Requires CalHFA to establish the financing program to issue credit instruments to qualified housing sponsors for the new construction, acquisition, and renovation of permanent or interim housing for housing that includes 1) a minimum of 25% of the total dwelling units reserved for tenants who are current or former foster youth who are 18 to 25 years that qualify for rental assistance from various federal and state programs; and 2) a minimum of 25% of the total number of dwelling units reserved for tenants who are lower income households.

3) Specifies requirements for how CalHFA administers the program, including the amount of rents that can be charged and how applications must be processed.

4) Requires CalHFA, by December 31, 2028, and every three years thereafter, to submit a report to the Legislature on the operations, financial performance, and accomplishments of the financing program during the previous fiscal year.

5) Requires CalHFA, upon appropriation, to issue loan guarantees for qualified loans made by financial institutions to qualified housing sponsors for the construction, acquisition, and renovation of qualified projects in accordance with this bill. Provides that any financial institution that issues a loan that is guaranteed by the agency pursuant to this article shall be fully reimbursed for up to 49% of the guaranteed portion of principal and interest that result from a loan or loans that are in default.

6) Requires CalHFA, upon appropriation, to offer secured loans to obligors, the proceeds of which shall be used by qualified housing sponsors for the construction, acquisition, and renovation of qualified projects as specified.

7) Requires CalHFA, upon appropriation, to enter into agreements to make lines of credit available to obligors in the form of direct loans to be made by the agency for a qualified project, as specified.

EXISTING LAW:

1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk or have been abused or neglected, as specified. (Welfare and Institutions Code (WIC) Section 202)

2) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected, or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. (WIC 300.2)

3) Provides for extended foster care funding for youth until age 21, and adopts other changes to conform to the federal Fostering Connections to Success Act. (WIC 241.1, 303, 366.3, 388, 391, 450, 11400, 11402, 11403)

4) Permits a nonminor former foster youth under the age of 21 to petition the court for re-entry into foster care if the guardian or adoptive parent is no longer providing support, as specified. (WIC 388.1)

5) Defines "nonminor dependent" as a current or former foster youth who is between 18 and 21 years old, in foster care under the responsibility of the county welfare department, county probation department, or Indian tribe, and participating in a transitional independent living plan (TILP), as specified. (WIC 11400(v))

6) Requires, when appropriate, for a nonminor dependent (NMD), the transitional independent living case plan, as described, to include in the TILP a written description of the programs and services that will help the youth dependent, consistent with their best interests, to prepare for transition from foster care. Requires, if applicable, the case plan to describe the individualized supervision provided in the supervised independent living placement. Requires the case plan to be developed with the NMD and individuals identified as important to the youth and to include steps the agency is taking to ensure that the youth dependent

achieves permanence, including maintaining or obtaining permanent connections to caring and committed adults. (WIC 16501.1 (g)(16)(A)(i)(ii))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 2674 will expand the number of affordable housing units available to former foster youth struggling with housing security. Stable housing impacts virtually all aspects of life and is a critical social determinant of health. Unfortunately, foster youth experience homeless and housing insecurity at greater rates than the general population. By leveraging the backing of the state for low-risk loans and creating lines of credit to build more affordable housing serving foster youth, California will be able to accelerate housing construction while supporting thousands of foster youth with the goal of forestalling homelessness. One easy step in addressing our homeless crisis is an investment in prevention. That is, doing everything we can to make sure foster youth have an affordable place to live as they transition from the foster care system and into adulthood."

CalHFA: CalHFA is the state's affordable-housing bank. CalHFA borrows money from the private financial market at below-market interest rates by issuing tax-exempt revenue bonds. CalHFA passes these interest rate savings on to low- and moderate-income first-time homebuyers and affordable rental housing developers by offering below market-rate mortgages. These bonds are backed only by CalHFA revenues and not by the state General Fund. CalHFA also provides downpayment assistance in the form of deferred, "silent second" mortgages (i.e., the borrower makes no monthly payments but repays the loan at sale or refinance) for families who need extra assistance achieving homeownership. CalHFA receives 15% of the funds generated by SB 2 (Atkins, Chapter 364, Statutes of 2017) for the Mixed Income Program (MIP) for the purposes of creating mixed-income, multifamily residential housing for lower- or moderate-income households. The 2019-2020 Budget provided an additional one-time $500 million investment into the MIP program. CalHFA also received $150 million for Home Purchase Assistance from Proposition 1 bond funds to provide first and junior loan options for low- to moderate-income families, including low to zero interest rate down payment assistance loans. In September 2021, CalHFA launched a new program to help homeowners finance ADUs. The ADU Grant Program will provide qualified homeowners up to $25,000 to help cover construction costs, with a focus on homeowners with low incomes, low equity in their homes, and those residing in low-income areas. The 2022-23 budget also provided $500 million for CalHFA to create and administer the California Dream for All homebuyer aid program. This program will provide shared appreciation loans to qualified low- and moderate-income, first-time homebuyers.

Housing Options for Foster Youth: There are many housing models and programs available to foster youth as they make the transition from care to independence. Below is a list of programs designed for foster youth and are a part of the services and supports that are available while in foster care and upon their discharge from foster care:

The Housing Navigation & Maintenance Program. Formerly the Housing Navigators Program, this program was established in Budget Act of 2019, AB 74 (Ting), Chapter 23, Statutes of 2019, and allocated $5 million to help young adults between 18 and 21 years old secure and maintain housing, with priority given to NMDs in the foster care system. The program is administered by the California Department of Housing and Community

Development (HCD) to county child welfare agencies to provide housing navigators to help young adults secure and maintain housing. Funds allocated to counties may be used to provide housing navigation services directly or through a contract with other housing assistance programs in the county, and counties are encouraged to coordinate with the local Continuum of Care to facilitate communication and collaboration. Funds may be used to: assist young adults secure and maintain housing; provide housing case management, including essential services in emergency supports to foster youth; prevent young adults from becoming homeless; and, improve coordination of services and linkages to key resources across the community. Effective July 1, 2022, as a result of the enactment of SB 187 (Committee on Budget and Fiscal Review), Chapter 50, Statutes of 2022, the program expanded the upper age limit to include youth up to until turning 25 years old, in order to align the program with federal Housing Choice Voucher Programs for former foster youth.

Transitional Housing Placement (THP). In 2019, SB 80 (Committee on Budget and Fiscal Review), Chapter 27, Statutes of 2019, allocated $8 million in grants to counties for child welfare services agencies to help young adults ages 18 to 25 years find and maintain housing. The THP program required that priority be given to youth who were formerly in the foster care or probation systems. SB 80 required HCD to consult with the California Department of Social Services, Department of Finance (DOF), and the County Welfare Directors Association of California to develop an allocation schedule for purposes of distributing funds, and subjected the program to suspend implementation on December 31, 2021, unless DOF made certain findings related to General Fund revenues and expenditures. Use of funds can include: identifying and assisting housing services; helping youth secure and maintain housing; improving coordination of services and linkages to community resources within the child welfare system and the homeless continuum of care; and, outreach and targeting to serve those with the most severe needs.

Transitional Housing Placement Program for Non-Minor Dependents. When AB 12 enacted extended foster care, the legislation also created the "Transitional Housing Placement Program + Foster Care" placement, now known as THP-NMD. This placement provides 18 to 21-year-old NMDs with transitional housing and supportive housing based on the youth's TILP. Youth participating in a THP-NMD placement receive case management, supervision, and supportive services from their THP-NMD provider. The goal of these services is to help the NMD transition to independent living by helping them meet education goals, obtain gainful employment, learn financial management and other daily living skills.

Transitional Housing Program-Plus. The THP-Plus program provides housing for former foster youth between the ages of 18 and 24 who exited foster care on or after their 18th birthday. A qualifying youth can then receive THP-Plus housing and services for 24 cumulative months, or until they turn 24 if that occurs before their 24 month clock has run out. To participate, an eligible youth must be actively pursuing the goals of their TILP, which is reviewed and updated annually. Additionally, the youth must report any changes to their TILP to their ILP coordinator, including but not limited to, changes in their address, living circumstances, or education training. Residential units, including apartments, single family dwellings, condominiums, college dormitories, and host family models may all qualify as an acceptable residential unit for the purposes of a THP-Plus placement. These placements are certified by the county social services agency who must ensure certain health and safety standards are met and must certify that the program is needed by the county and the provider is capable of effectively operating the program and meeting the needs of the identified

population. In fiscal year 2020-21, California had the capacity to serve 1,309 youth in THP-Plus at a moment in time.

Supervised Independent Living Placements (SILPs). NMDs in extended foster care also have the option of living in a SILP which allows the youth to live independently while still receiving the supports and services extended foster care provides. In an SILP, a youth lives in an apartment, house, condominium, room and board arrangement, or college dorm, either alone or with an approved roommate, while still under the supervision of their social worker or probation officer. A SILP may also include a transitional living setting approved by the county to support youth who are entering or reentering foster care or transitioning between placements, but prohibits this setting from including a youth homelessness prevention center or an adult homeless shelter. Youth must be approved to live in an SILP, and this occurs through them undergoing a SILP Readiness Assessment that reviews the youth's preparedness to live independently. If this assessment finds the youth is ready for a SILP, then the housing arrangement the youth has found must undergo and pass a health and safety inspection which is conducted by the county. If the residence passes this inspection, a placement agreement is completed by the NMD and their social worker or probation officer whereby they agree that the placement has met certain safety standards and is an appropriate placement for the youth.

Efforts to Consolidate and Streamline State Housing Programs: The state provides funding for affordable housing production through Low Income Housing Tax Credits and long-term loans in that infuse equity into the development. In the past few years, the Legislature has attempted to streamline affordable housing funding, to reduce the complexity and time for developers. Affordable housing developers often cite the need to apply for multiple programs to fund one affordable housing development as a cost driver to development. State housing programs are administered by HCD, CalHFA, the Tax Credit Allocation Committee (TCAC), and the Strategic Growth Council. In an effort to streamline funding, the Legislature passed AB 484 (Daly), Chapter 434, Statutes of 2020 which required HCD to create a combined notice of funding availability (NOFA), commonly called the Super NOFA, for multiple overlapping programs that fund multi-family rental housing for lower-income families. Last year, AB 519 (Schiavo), Chapter 742 required TCAC, HCD, and CalHFA to convene an Affordable Housing Finance Workgroup to make recommendations to develop a common application process for the programs they administer on or before January 1, 2027.

Budget Challenges: Although final revenues are not in, the Legislative Analyst's Office estimates that the state is facing a $58 billion budget deficit. The Governor's January budget proposes to cut $1.2 billion in existing budget commitments to affordable housing programs, including eliminating $500 million for the state Low Income Housing Credit, a core program necessary to fund affordable multi-family housing programs. The last voter-approved housing bond, Proposition 1 from 2018, provided $3 billion for various affordable housing programs, which has fully spent down.

Policy Considerations: This bill would create a new program in a time when the state is attempting to consolidate and streamline existing programs. HCD operates the Multi-family Housing Program, the state's flagship multi-family loan program that could fund the types of programs envisioned by this bill. The Legislature adds additional complexity to affordable housing finance when specialized funding programs for specific sub-populations. The developments funded by this new program are similar to affordable housing for lower-income

families which rely upon federal Housing Choice Vouchers as a source of ongoing revenue to fund rents. Private lenders are familiar with this model and underwriting projects that utilize Housing Choice Vouchers. Because of the high level of affordability in the bill (50% - 25% for former foster youth and 25% for lower income households) the program envisioned by this bill would require additional state subsidy in the form of LIHTC or long-term equity investments to support the overall affordability of developments. This bill would require CalHFA to offer loan guarantees to traditional lenders in an effort to entice more private capital into the affordable housing finance. This will require some state funding, either from the General Fund or some other source, to back the loans.

Arguments in Support: According to the sponsor, Walden Family Services, "by offering secured loans, loan guarantees, and lines of credit to housing developers and qualified organizations for the construction, acquisition, and renovation of housing – a portion of which will be dedicated to current and former foster youth – AB 2674 will increase the total supply of affordable housing for young people and low-income families."

Arguments in Opposition: None on file.

Related Legislation:

AB 963 (Schiavo) of 2023 would have required the California Infrastructure and Economic Development Bank (IBank) to establish one or more programs to guarantee qualified loans for the construction, acquisition, and renovation for housing for current or former foster youth who are 18 to 25 years of age and qualify for specified housing programs, with preference given to municipalities with high housing inelasticity and high rates of foster youth. This bill was held in Assembly Appropriations Committee.

Double Referred: This bill was also referred to the Assembly Committee on Human Services, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Walden Family Services (Sponsor)
A Better Way
Aspiranet
Association of Community Human Service Agencies
California Alliance of Caregivers
California Alliance of Child and Family Services
California Youth Connection
Children Now
Ethos
First Place for Youth
Fred Finch Youth & Family Services
PowerCA Action
Safe Place for Youth
Sycamores
Youth Law Center

Opposition

None on file.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2728 (Gabriel) – As Amended March 11, 2024

SUBJECT: Planning and zoning: housing development: independent institutions of higher education and religious institutions

SUMMARY: Makes changes to housing element and Annual Progress Report (APR) requirements related to the production of housing under the Affordable Housing on Faith and Higher Education Lands Act of 2023 (Act), among other things. Specifically, **this bill**:

1) Requires planning agencies to report in their APRs the following information with respect to housing development projects under the Act:

    a) The number of applications submitted under the Act;

    b) The location and number of developments approved under the Act;

    c) The total number of building permits issued under the Act; and

    d) The total number of units constructed under the Act and the income category of those units.

2) Requires a housing element's implementation program to include development of a plan that incentivizes and promotes the production of affordable housing on land owned by independent institutions of higher education and religious institutions under the Act.

3) Requires the Department of Housing and Community Development (HCD) to develop a list of existing state grants and financial incentives in connection with the planning, construction, and operation of affordable housing on land owned by independent institutions of higher education and religious institutions under the Act.

4) Requires HCD to develop a set of model partnership agreements that can be used by independent institutions of higher education and religious institutions when they partner with an affordable housing builder.

EXISTING LAW:

1) Establishes the Act, which provides a streamlined, ministerial approval process for affordable housing developments that satisfy certain requirements until January 1, 2036, including:

    a) The development is located on land owned by January 1, 2024, by an independent institution of higher education or a religious institution;

    b) The development complies with certain locational requirements;

    c) One hundred percent of the development project's total units, exclusive of manager units, are for lower income households, with up to 20% of total units allowed for

moderate income households, and up to 5% allowed for staff of the independent institution of higher education or religious institution that owns the land;

d) The development project complies with all objective development standards of the city or county that are not in conflict with the Act;

e) The applicant certifies to the local government that all construction workers employed in the development will be paid at least the general prevailing rate of per diem wages, as specified, and developments of 50 or more housing units will make health care expenditures in specified amounts;

f) The development proponent completes a Phase I or II environmental assessment, if warranted; and

g) The development project complies with certain specified density, height, and parking allowances. (Government Code (GC) Section 65913.16)

2) Requires a local government's housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality's existing and projected housing needs for all income levels; an inventory of land suitable and available for residential development; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need, among other things. (GC 65583(a))

3) Requires a local government's housing element to include a program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element, including all of the following:

a) Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the jurisdiction's share of the regional housing need for each income level that could not be accommodated on vacant sites without rezoning, which must affirmatively further fair housing and facilitate the development of housing for all income levels, including multifamily rental housing, as specified;

b) Assist in the development of adequate housing to meet the needs of extremely low-, very low-, low-, and moderate-income households;

c) Address and remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities;

d) Conserve and improve the condition of the existing affordable housing stock;

e) Promote and affirmatively further fair housing opportunities;

f) Preserve for lower income households the assisted housing developments that are at risk of changing from low-income housing uses;

g) Develop a plan that incentivizes and promotes the creation of accessory dwelling units (ADUs) that can be offered at affordable rent for very low-, low-, or moderate-income households;

h) Include an identification of the agencies and officials responsible for implementation of the various actions;

i) Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element; and

j) Affirmatively further fair housing in accordance with specified law. (GC 65583(c))

4) Requires a planning agency to provide an APR to the legislative body, the Office of Planning and Research, and HCD by April 1 of each year that includes certain information, including:

a) The progress in meeting its share of the regional housing needs, including the need for extremely low-income households, and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing included in the housing element;

b) The number of housing development applications received in the prior year, including whether each housing development application is subject to a ministerial or discretionary approval process;

c) The number of units included in all development applications in the prior year;

d) The number of units approved and disapproved in the prior year;

e) A listing of sites rezoned to accommodate that portion of the city or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the housing element's site inventory and any sites that may have been required to be identified under the No Net Loss Zoning law;

f) The number of housing units demolished and new units of housing, including both rental housing and for-sale housing, 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 that each housing unit satisfies;

g) Specified information related to density bonus applications; and

h) Specified information related to Affordable Housing and High Road Jobs Act of 2022 applications. (GC 65400(a)(2)(A)-(M))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 2728 supports the production of affordable homes on land owned by faith institutions. This bill adds common sense measures and tools to support the efforts of our faith leaders to house the unhoused and low-income families. This kind of locally driven leadership will help us address our crippling housing crisis."

California's Housing Crisis: California is in the midst of a severe housing crisis. Over two-thirds of low-income renters are paying more than 30% of their income toward housing, a "rent burden" that means they have to sacrifice other essentials such as food, transportation, and health care.[1] In 2023, over 181,000 Californians experienced homelessness on a given night, with a sharp increase in the number of people who became homeless for the first time.[2] The crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership's (CHP) Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 687,000 available and affordable rental units in the state. Over three-quarters of the state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50% of their income toward rent each month. CHP estimates that the state needs an additional 1.3 million housing units affordable to very low-income Californians to eliminate the shortfall.[3] By contrast, production in the past decade has been under 100,000 housing units per year – including less than 10,000 units of affordable housing per year.[4]

Affordable Housing on Faith and Higher Education Lands Act of 2023 (Act): Last year, the Legislature passed and the Governor signed SB 4 (Wiener), Chapter 771, which established the Act. The Act established a streamlined, by-right approval process for housing developments that meet specific criteria until January 1, 2036, including:

- The development must be located on land owned by January 1, 2024, by an independent institution of higher education or a religious institution, as defined;
- One hundred percent of the development project's total units, exclusive of manager units, must be for lower income households, with up to 20% of total units allowed for moderate income households, and up to 5% allowed for staff of the independent institution of higher education or religious institution that owns the land;
- The development project must be on an infill site and not be in an environmentally unsafe or sensitive area;
- The development project must comply with all objective development standards of the local government that are not in conflict with the Act;
- The applicant must certify to the local government that all construction workers employed in the development will be paid at least the general prevailing wage rate, and developments of 50 or more housing units must make worker health care expenditures in specified amounts;
- The development proponent must complete a Phase I or II environmental assessment, if warranted; and

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[1] https://chpc.net/housingneeds/
[2] https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html
[3] https://chpc.net/housingneeds/
[4] https://www.hcd.ca.gov/policy-research/housing-challenges.shtml

- The development project must follow certain density, height, and parking limitations.

In August 2023, the UC Berkeley Terner Center released a study of the potential for new housing on sites owned by religions institutions and non-profit colleges.[5] The study identified over 170,000 acres of land owned by these entities across the state – 47,000 by religious institutions and 124,000 by universities. The study did not examine the amount of potentially developable land on each site; however, even if only a small fraction of these 170,000 acres is developable, at a typical density of 30 units per acre, the Act could create thousands of new units of affordable housing.

***Adoption and Implementation of Housing Elements*:** One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan for new housing. Such planning is required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most of the high population parts of the state, and five years in areas with smaller populations. Cities must adopt a legally valid housing element within 120 days of their statutory deadline for adoption. Failure to do so can result in certain penalties, including exposure to the "builder's remedy" as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or even court receivership.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region's housing needs allocation (RHNA). To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element. Depending on whether the jurisdiction met its statutory deadline for housing element adoption, it will have either one year (if it failed to meet the deadline) or three years (if it met the deadline) from its adoption deadline to complete that rezoning program.

It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment locally for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will be slow to build. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and that it not engage in exclusionary zoning practices.

A key component of a housing element is a program with a schedule of actions (and timelines for implementation) that a local government is taking or plans to undertake to implement the housing element's goals and objectives. The schedule of actions must include the locality's rezoning program, its plans to assist in developing affordable housing, activities to address or remove governmental and nongovernmental constraints to housing development and

[5] https://ternercenter.berkeley.edu/wp-content/uploads/2023/08/Faith-Based-and-College-Lands-Housing-2023-.pdf

maintenance, plans for how to affirmatively further fair housing opportunities, plans for incentivizing the production of affordable ADUs, and more.

This bill would require local governments to develop and incorporate into their housing element program a plan that incentivizes and promotes the production of affordable housing under the Act. Because the Act creates a statewide by-right process separate from local zoning rules, a local government would not need to modify its local land use rules or perform rezonings to see projects come forward under the Act. The committee may wish to consider whether it is appropriate to mandate all 539 jurisdictions in California to develop such a plan, given not all communities will have nonprofit colleges or religious institutions (and furthermore, with an interest in utilizing the Act) within their jurisdictional boundaries, and the Act is a time-limited law which is currently scheduled to sunset in 2036, which would be partway through many jurisdictions' seventh cycle housing elements.

Annual Progress Reports: Current law requires all local jurisdictions to provide housing information annually to HCD via the APR, including the following information from the prior year and/or for the current eight-year housing element cycle:

- The number of housing development applications received, and whether those applications are subject to ministerial or discretionary approval;
- The number of units included in all development applications;
- The number of units approved and disapproved;
- For each income category, the number of net new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, a building permit, or a certificate of occupancy;
- A unique site identifier (such as assessor's parcel number) for each entitlement, building permit, or certificate of occupancy;
- The number of applications submitted under the Affordable Housing and High Road Jobs Act of 2022; and
- The overall progress in meeting its share of RHNA.

This bill would add information about applications submitted under the Act to the list of information required to be submitted in a local government's APR each year.

HCD Obligations: This bill requires HCD to develop a set of model partnership agreements that could be used by independent institutions of higher education and religious institutions when they seek to partner with an affordable housing developer to build affordable housing under the Act. It also requires HCD to develop a list of existing state grants and financial incentives in connection with affordable housing under the Act. These are similar to resources that HCD has previously developed to support the production of ADUs.

Arguments in Support: According to the Los Angeles County Business Federation, the bill's sponsor, "As a sponsor, AB 2728 (Gabriel) will build on the success of SB 4 (Wiener, 2023) to require a 'Look Back' provision where local governments will provide: the number of applications submitted under SB 4, the location of SB 4 projects, and the total number of building permits and units constructed as a result of SB 4. In addition, AB 2728 (Gabriel) will require the California Department of Housing and Community Development to identify and develop a list of state grants and financial incentives in connection with the planning, construction, and operation of affordable to moderate-income housing."

Arguments in Opposition: None on file.

Committee Amendments: Staff recommends the bill be amended as follows:

- Strike Government Code Section 65583(c)(8), which requires a local government's housing element program to include the development of a plan to incentivize and promote the production of affordable housing under the Act; and

- Modify Health and Safety Code Section 50504.6 to require HCD to develop and publish the list of grants and incentives and model partnership agreements by July 1, 2025:

50504.6. (a) ***By July 1, 2025,*** ~~T~~t**t**he department shall develop ***and publish both of the following:***

(1) A list of existing state grants and financial incentives in connection with the planning, construction, and operation of very low, low-, and moderate-income housing on land owned by independent institutions of higher education and religious institutions, as those terms are defined in Section 65913.16 of the Government Code.
(2) A set of model partnership agreements that can be used by independent institutions of higher education and religious institutions when they partner with an affordable housing builder pursuant to (1).

~~(b) The department shall develop a set of model partnership agreements that can be used by independent institutions of higher education and religious institutions when they partner with an affordable housing builder.~~

Related Legislation:

AB 2144 (Grayson) of the current legislative session adds evidence of compliance with existing law requirements for local governments to post fee schedules and other information on their websites to the list of information local governments must provide in their APR by April 1 of each year. This bill recently passed out of this committee on a 9-0 vote and is pending before the Assembly Committee on Local Government.

AB 2580 (Wicks) of the current legislative session adds information about a local government's historic preservation practices and policies to the constraints analysis required by housing element law, and requires a local government to provide in its APR a list of all historic designations listed on specified registers of historic places in the past year, including an assessment of how those designations affect the ability of the local government to meet its housing needs. This bill is currently pending before this committee.

SB 4 (Wiener), Chapter 771, Statutes of 2023: Enacted the Affordable Housing on Faith and Higher Education Lands Act of 2023.

Double Referred: This bill is double-referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Business Federation (BIZ-FED) (Sponsor)
California Catholic Conference
Christian Church Homes
Circulate San Diego
CivicWell
EAH Housing
East Bay Housing Organizations
Habitat for Humanity California
Housing Action Coalition
Inner City Law Center
Lutheran Office of Public Policy - California
MidPen Housing Corporation
Monterey Bay Economic Partnership
Nonprofit Housing Association of Northern California
Move LA
Resources for Community Development
SPUR
YIMBY Action

Opposition

None on file.

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
AB 2897 (Connolly) – As Amended April 1, 2024

SUBJECT: Property tax: welfare exemption: community land trusts

SUMMARY: Makes changes to the definition of a community land trust (CLT) for purposes of property tax assessment and adds cross references in various statutes to the definition of CLT. Specifically, **this bill**:

1) Adds a cross-reference to the definition for community land trust (CLT) where applicable in the following code sections:

    a) Provisions requiring foreclosed homes to be offered first to owner-occupant buyer or non-profit corporations, including CLTs;

    b) The authorizing statute of the Los Angeles County Affordable Housing Solutions Agency;

    c) Statute governing the CalHome Program; and

    d) Statute governing the Foreclosure Intervention Housing Preservation Program.

2) Adds to the definition of CLT:

    a) A CLT may own rental units that are not subject to a 99 year lease; and

    b) A CLT may own parcels that do not have dwellings or units on them and are not intended for the construction of dwellings or units, provided that those purposes are not cause for revocation of the non-profit tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

EXISTING LAW:

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 purpose 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; and

    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. (Revenue and Taxation (R&T) Code Section 402.1)

2) Provides that a property is within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution if the property is owned by a CLT, otherwise qualifying for exemption under R&T Section 214, and all of the following conditions are met:

   a) The property is being or will be developed or rehabilitated as any of the following:

      i) An owner-occupied single-family dwelling;

      ii) An owner-occupied unit in a multifamily dwelling;

      iii) A member-occupied unit in a limited equity housing cooperative; or

      iv) A rental housing development;

   b) Improvements on the property are or will be available for use and ownership or for rent by qualified persons; and

   c) A deed restriction or other instrument, requiring a contract or contracts serving as an enforceable restriction on the sale or resale value of the owner-occupied units or on the affordability of rental units, is recorded on or before the lien date following the acquisition of the property by the CLT, as specified. (R&T Code Section 214.18)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Updating the definition of a community land trust allows us to embrace the full range of diverse purposes a community land trust can serve, and aligns its statutory definition with property stewardship practices. Allowing community land trusts to serve non-residential purposes for collective use enriches our state and benefits our community."

Community Land Trusts: CLTs provide an affordable housing model to help low and moderate income households that may not otherwise be able to purchase a home. The CLT acquires and develops properties for sale to low and moderate income households, but retains ownership of the underlying land and leases the land to the homeowner for a nominal fee through a long-term ground lease (usually a 99-year term). The home is therefore more affordable because the homeowner is only buying the building and not the land underneath. If the homeowner decides to sell the property, the home must be resold to another low or moderate income household, and the original owner will only be eligible for a smaller share of its appreciated value. Since the CLT is the owner of the land, it will be a party to all future sales and enforce resale restrictions. According to the California Community Land Trust Network, many CLTs in California also have robust rental portfolios restricted for low and moderate income households.

A CLT is generally formed as a membership-based, non-profit organization with a professional staff, led by a member-elected board of directors and funded by land rent fees. Members include CLT homeowners, neighbors, and other local residents, providing community buy-in over local development. Many CLTs also provide homeowners with homebuyer education and financial literacy courses. While a subsidy is often needed to start a CLT, outside funding is no longer necessary once homes are occupied.

According to the National Community Land Trust Network, virtually all CLT leases pass along the cost of property taxes to the homeowner. The homeowner is either directly assigned to pay property taxes associated with both the home and underlying land, or is directly assigned to pay property taxes associated with the home and then pays any property taxes associated with the underlying land via its lease fee to the CLT.

Assessment of Restricted Homes: Existing law requires every assessor to assess property subject to tax at its full value. In the assessment of land, the assessor must consider the effect of any enforceable restrictions to which the use of land may be subject, such as zoning, easements, environmental restrictions, and recorded contracts with governmental agencies including those outlining affordable housing restrictions. AB 2818 (Chiu), Chapter 701, Statutes of 2016, addressed inconsistences in the assessment of CLT properties by requiring a county assessor to consider the effect of private party affordability restrictions on a property's use when determining that property's assessed valuation. In order to benefit from such consideration, a CLT must provide a recorded contract to a county assessor that subjects affordability restrictions to the property. A public agency or official must also find that the affordability restrictions in the contract serve the public interest to create and preserve the affordability of residential housing for low and moderate income households.

Definition Change**:** A CLT is defined as a non-profit corporation that satisfies all of the following requirements: 1) has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences; 2) 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; and 3) 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.

As discussed above, one of the main challenges CLTs have faced over the years is receiving an accurate evaluation of the CLT's property value for purposes of property tax assessment. AB 2818 (Chiu) attempted to address this issue by amending R&T Code Section 402.1 to create a process for assessors to take into consideration the affordability restrictions on the property and the existence of a 99 year lease on the underlying land. Part of that clarification required adding a definition of CLT to R&T Code 402.1. In addition to owning and leasing dwelling units, CLTs may also own property that is used for a community garden or other community purpose consistent with the nonprofit status of the CLT. In at least one case, because the CLT owns property that it is using for non-housing purposes, an assessor challenged the CLT's ability to qualify for a reduced property tax exemption because the definition of CLT does not include ownership of other properties. With this bill, CLTs are not requesting those properties receive a reduced property tax assessment under 402.1, but are amending the statute to make it clear that CLT can still qualify for a reduced assessment on housing units even if the CLT owns property that it is using for another purpose.

Arguments in Support: According to the sponsor, California Community Land Trust Network, AB 2897 will update the statutory language used to define CLTs in state law to reflect the full range of community serving activities of CLTs today.

Arguments in Opposition: None on file.

Related Legislation:

AB 430 (Bennett) of 2023 is almost identical to AB 2897. It made changes to the definition of a CLT for purposes of property tax assessment and adds cross references in various statutes to the definition of CLT. This bill was held in the Senate Appropriations Committee.

AB 2818 (Chiu), Chapter 701, Statutes of 2016: Addressed inconsistences in the assessment of CLT properties by requiring a county assessor to consider the effect of private party affordability restrictions on a property's use when determining that property's assessed valuation.

Double Referred: This bill was also referred to the Assembly Committee on Revenue and Taxation, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Community Land Trust Network (Sponsor)

Opposition

None on file.

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