

Date of Hearing: May 14, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Christopher M. Ward, Chair

AB 3093 (Ward) – As Amended May 6, 2024

SUBJECT: Land use: housing element: streamlined multifamily housing

SUMMARY: Creates two new income categories, Acutely Low Income (ALI) and Extremely Low Income (ELI), in the Regional Housing Needs Determination (RHND), Regional Housing Needs Allocation (RHNA), and Housing Element Law. Specifically, **this bill:**

- 1) Defines the following household income categories for purposes of the RHND, RHNA, and other provisions of Housing Element Law:
 - a) Acutely Low Income (ALI), meaning those earning between 0% and 15% of the area median income (AMI);
 - b) Extremely Low Income (ELI), meaning those earning between 15% and 30% of the AMI;
 - c) Very Low Income (VLI), meaning those earning between 30% and 50% of the AMI;
 - d) Lower Income (LI), meaning those earning between 50% and 80% of the AMI;
 - e) Moderate Income (MI), meaning those earning between 80% and 120% of the AMI; and,
 - f) Above Moderate Income, meaning those earning more than 120% of the AMI.
- 2) Identifies ALI and ELI households as households with special housing needs for purposes of Housing Element Law.
- 3) Removes the existing calculation methodology for ELI households for purposes of Housing Element Law and replaces it with the calculation determined by the Department of Housing and Community Development (HCD) through the RHND process.
- 4) Requires local housing elements to include programs that will assist in the development of housing for ALI households in addition to the existing requirement for all other incomes.
- 5) Requires ALI and ELI housing needs to be accounted for in the sites inventories of local housing elements, and any required rezonings if there are insufficient sites to meet those housing needs.
- 6) Requires HCD to include ALI and ELI households in the RHND.
- 7) Requires regional Councils of Governments (COGs) to provide HCD with data on the housing needs of individuals and families experiencing homelessness for the purpose of determining the RHND.
- 8) Adds the ALI and ELI income categories to the proportionate reduction provisions permitted between county and cities within the county when one or more of those cities agree to

increase their share of the RHNA during the period of time between the adoption of a final RHNA and the due date of the housing element update.

- 9) Subjects a local government to a streamlined, ministerial approvals process for certain housing projects if the jurisdiction does not meet the housing needs of ALI and ELI households, as reported in Annual Progress Reports (APRs) to HCD.
- 10) Finds that the changes proposed by this bill address a matter of statewide concern, and therefore apply to all cities, including charter cities.

EXISTING LAW:

- 1) Requires HCD, in collaboration with the Governor's Office of Planning and Research (OPR), after engaging in stakeholder participation, to develop recommendations to improve the RHNA process and methodology that promotes and streamlines housing development and substantially addresses California's housing shortage. (Health and Safety Code (HSC) Section 50515.05)
- 2) Establishes the following four household income categories for purposes of the RHND/RHNA:
 - a) Very Low Income (VLI), meaning those earning below 50% of the AMI;
 - b) Lower Income (LI), meaning those earning between 50% and 80% of the AMI;
 - c) Moderate Income (MI), meaning those earning between 80% and 120% of the AMI; and,
 - d) Above Moderate Income, meaning those earning more than 120% of the AMI. (Government Code (GOV) Section 65584)
- 3) Provides that each community's fair share of housing be determined through the RHND/RHNA. Establishes the following process:
 - a) The Department of Finance (DOF) and HCD develop regional housing needs determinations;
 - b) COGs allocate housing among the jurisdictions in their region based on these determinations, and where a COG does not exist, HCD conducts the allocations; and
 - c) Cities and counties develop local housing element plans detailing how they will meet their allocation. (GOV 65584 and 65584.01)
- 4) Requires HCD, in consultation with each COG, to determine the RHND for each region using population projections produced by DOF and regional population forecasts used in preparing regional transportation plans (RTP), in consultation with each COG. If the total regional population forecast for the projection year developed by the COG and used in the RTP is within a range of 1.5% of DOF's projection, then the COG's forecast must be used for the RHND. If the difference between the COG and DOF's projection is greater than 1.5%, then HCD and the COG must meet to discuss variances in methodology used for the projections and seek agreement on a projection for the region to be used for the RHND. If

agreement is not reached, then DOF's projection must be used, and may be modified by HCD as a result of discussions with the COG. (GOV 65584.01)

- 5) Requires HCD, at least 26 months prior to the housing element adoption deadline for the region 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 RHND. Requires the COG to provide data assumptions from their projections. (GOV 65584.01)
- 6) Allows HCD to accept or reject the information provided by the COG in 4) or modify its own assumptions or methodology based on this information. (GOV 65584.01)
- 7) Requires HCD, after consultation with the COG, to make determinations in writing on the assumptions for each of the factors in 4) and the methodology it shall use, and requires HCD to provide these determinations to the COG. (GOV 65584.01)
- 8) Requires HCD, after consultation with the COG, to determine the region's existing and projected housing need based upon the assumptions and methodology in 4)-6). Requires the RHND to reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan. (GOV 65584.01)
- 9) 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, 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 3) above. (GOV 65584)
- 10) Requires each COG or delegate subregion, at least two years before a scheduled revision of the housing element in 3), 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. (GOV 65584.04)
- 11) 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. (GOV 65584.04 and 65584.05)
- 12) Allows regional governments to reduce the share of regional housing needs of a county during the period between the adoption of a final RHNA and the housing element due date if one or more cities in the county agree to increase their share of housing needs in an amount equivalent to the reduction. Requires the county's share of low- and very low income housing to be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced. (GOV 65584.07)

- 13) 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. (GOV 65583)
- 14) Requires local governments to include an assessment of housing needs and resources in their housing elements for the four income categories in 1), as well as for extremely low-income households. Requires local agencies to assess housing needs for extremely low-income households either by using census data or by assuming that 50% of very low-income households qualify as extremely low-income. (GOV 65584)
- 15) 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. (GOV 65400)
- 16) Requires jurisdictions that fail to meet their RHNA targets, as reported in the APR, to approve certain housing projects in a streamlined, ministerial manner. (GOV 65913.4)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "AB 3093 will ensure that our housing planning processes are inclusive of the most vulnerable Californians - those experiencing homelessness and those who are on the brink of it. By introducing Extremely Low-Income and Acutely Low-Income categories into the Regional Housing Needs Allocation, we can recognize and plan for the housing needs of individuals earning the lowest incomes in the state. This recognition is crucial for crafting effective and targeted housing policies that will cater to individuals earning up to 30% and 15% of the Area Median Income, respectively. The state cannot fix what it does not track.

AB 3093 stems from the alarming increase in homelessness across our state, which has risen by 53% since 2013. On any given night, 181,000 Californians experience homelessness. Despite significant investments to combat this crisis, the persistent increase in Californians experiencing homelessness underscores the need for a more comprehensive approach to our housing policies. This bill will require local governments to integrate these new income categories into their housing elements, ensuring that they effectively plan for, and implement, strategies to meet the needs of our most at-risk Californians. By doing so, AB 3093 will promote equity in local housing elements and foster innovative local solutions that address the root causes of homelessness, ultimately leading us toward a future where every Californian has access to safe, affordable housing."

Homelessness in California: California has invested significant financial resources to combat the homelessness crisis, but the number of Californians experiencing homelessness continues to grow. California has the largest population of people experiencing homelessness in the nation with over 181,000 people experiencing homelessness on any given night, according to the 2023 Federal Point-In-Time (PIT) Count.¹ Since 2013, homelessness has grown by 53% statewide.² Of those individuals, over 123,000 are unsheltered, meaning they live on the streets, sleep in cars, camp in parks, or are otherwise staying in places not designed for human habitation.³ Nearly half of all unsheltered people in the country were in California during the 2023 PIT Count.⁴

UCSF's California Statewide Study of People Experiencing Homelessness shows that minority groups are overrepresented in the population of Californians experiencing homelessness. In this survey of unhoused Californians, "participants who report a Black (26%) or Native American or Indigenous identity (12%) were overrepresented [in the homeless population] compared to the overall California population. Thirty-five percent of participants [in the survey] identified as Latino/x."⁵

The homelessness crisis is largely driven by the lack of affordable housing options in the state. Cities with high housing costs and limited housing availability tend to have higher rates of homelessness.⁶ Of the six million renter households in the state, 1.7 million are paying more than 50% of their income toward rent, and homeownership is increasingly out of reach for many Californians. According to HCD's 2022 Statewide Housing Plan update, lower-income renters, families with children, persons with disabilities, and BIPOC households are the most likely to be behind on rent, and therefore at risk of experiencing homelessness. Although the RHND/RHNA process does include households that are 50% of AMI or less, it does not incorporate population targets for extremely-low income or acutely low-income households who are the greatest risk of homelessness or already experiencing homelessness.

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.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of RHNA. Local jurisdictions must adopt legally compliant housing elements on time to meet statewide housing goals and create the environment for the construction of housing at all income levels. Unless communities plan for production and preservation of housing, both in terms of land availability and implementing programs to facilitate housing production, new housing will be slow or extremely difficult to build. Adequate

¹ HUD PIT Count: <https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html>

² <https://information.auditor.ca.gov/reports/2023-102.1/index.html>

³ HUD PIT Count.

⁴ IBID.

⁵ <https://homelessness.ucsf.edu/our-impact/studies/california-statewide-study-people-experiencing-homelessness>

⁶ Colburn, G., & Aldern, C. P. (2022). *Homelessness is a Housing Problem*. University of California Press.

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 it does not require the community to actually develop the housing, Housing Element Law requires the community to plan for it and implement those plans.

RHND/RHNA: The RHND/RHNA process is used to determine how many new homes, and the affordability level of the homes, that each local government must plan for in its housing element to meet the housing needs of current and future residents. The RHND is assigned by HCD to each region in the state at the COG level, while RHNA is suballocated to subregions of the COG or directly to local governments. This process currently includes 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). Local governments must include an analysis of the housing needs of extremely low-income households (0-30% of AMI) in their housing elements, but extremely low-income is not currently a category in the RHND/RHNA process.

The state is currently in the 6th RHNA cycle. Each new RHNA cycle begins with HCD and the DOF projecting new RHND numbers every five or eight years, depending on the region. DOF produces population projections and the COG also develops projections during its Regional Transportation Plan (RTP) forecast. Then, 26 months before the housing element due date for the region, HCD must meet and consult with the COG and share the data assumptions and methodology that they will use to produce the RHND. The COG provides HCD with its own regional data on several criteria, including:

- 1) Anticipated household growth associated with projected population increases;
- 2) Household size data and trends in household size;
- 3) The percentage of households that are overcrowded, as defined, and the overcrowding rate for a comparable housing market, as defined;
- 4) The rate of household formation, based on age, gender, ethnicity, or other established demographic measures;
- 5) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs, as specified;
- 6) Other characteristics of the composition of the projected population;
- 7) The relationship between jobs and housing, including any imbalance between jobs and housing;
- 8) The percentage of households that are cost-burdened and the rate of housing cost burden for a healthy housing market, as defined; and
- 9) The loss of units during a declared state of emergency during the planning period immediately preceding the relevant housing element cycle that have yet to be rebuilt or replaced at the time of the data request.

HCD can take this information and use it to modify its own methodology, if HCD agrees with the data the COG produced, or HCD can reject it if there are other factors or data that HCD believes to be better or more accurate. Then, after consultation with the COG, HCD makes written determinations on the data it is using for each of the factors bulleted above, and provides that information in writing to the COG. HCD uses that data to produce the final RHND. Each COG must then take the RHND and create an allocation methodology that distributes the housing need equitably amongst all the local governments in its region. The RHNA methodology is statutorily obligated to further all of the following objectives:

- 1) Increase 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;
- 2) Promote infill development, socioeconomic equity, the protection of environmental and agricultural resources, and achievement of regional climate change reduction targets;
- 3) Promote 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) Allocate 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 further fair housing.

California's Housing Future 2040: The Next RHNA: HSC Section 50515.05 directed HCD, in collaboration with OPR, and after engaging in stakeholder participation, to develop recommendations to improve the RHNA process and methodology. In April 2024, HCD released those recommendations in a new report, *California's Housing Future 2040: The Next RHNA*.⁷ This bill would implement Topic #1: Account for the Housing Needs of People Experiencing Homelessness, of the Determination-Related Recommendations to the Legislature contained in that report.

This bill would require the state to identify the housing needs of Californians experiencing homelessness and require local governments to plan to meet those housing needs in their local housing elements. Adding ELI and ALI income categories to the RHND/RHNA process will help to determine and accommodate the needs of households earning up to 30% of AMI and up to 15% of AMI, respectively. As an example, an ALI household may consist of a single adult with a disability who relies on an SSI check as their sole source of income. An ELI household may include an adult couple with two young children, working hourly, minimum-wage jobs with inconsistent hours, resulting in a variable month-to-month income. These populations are currently lumped together in the VLI income category of RHNA, which serves households earning between 0% and 50% of AMI. Because 0% to 50% is such a large range, deed-restricted VLI homes typically serve the higher end of that range (around 50% of AMI) and may render permanent housing in this income category unaffordable for Californians with the lowest incomes, including those without any income.

Creating these ELI and ALI categories will require regions and local governments to develop targeted programs and strategies in their housing elements that cater to the needs of Californians at the lowest end of the income spectrum, including homeless individuals and those at risk of homelessness. This bill would set a baseline that cities and counties will be measured against to ensure that every locality is doing its part to meet the housing needs of Californians experiencing homelessness. It will also provide local governments with the opportunity to track and highlight compelling local programs and innovations that are successfully addressing homelessness.

Furthermore, this bill would ensure that HCD's RHND is augmented by the best available local homelessness data, provided by COGs, to ensure the accuracy of the figures in the newly created income categories. Combining the best data sources available will help create a more accurate

⁷ <https://www.hcd.ca.gov/planning-and-community-development/regional-housing-needs-allocation>

understanding of homelessness housing needs throughout California. Potential data sources identified by HCD in California's Housing Future 2040: The Next RHNA include:

- 1) Coordinated School Health and California Basic Educational Data;
- 2) HUD Point-In-Time (PIT) Count Data; and
- 3) Homeless Data Integration System (HDIS) Data

It is important to note that each of these data sources, in and of themselves, are imperfect when it comes to painting the full picture of individuals experiencing homelessness in a given area. Coordinated School Health and California Basic Educational Data identifies the number of students experiencing homelessness, but is limited to school-aged children and relies on data collected and provided by school districts and reported to the Department of Education. The PIT Count is conducted by volunteers in local communities, and provides a snapshot of people experiencing homelessness on a single night in January. While it is the most commonly used figure when it comes to understanding homelessness in the nation, and is mandated by the U.S. Department of Housing and Urban Development (HUD), the PIT Count has been criticized as likely undercounting the number of people experiencing homelessness. Lastly, HDIS Data is collected by Continuums of Care (CoCs) in California, and tracks the number of individuals served by homeless service providers. HDIS data is also imperfect as it is conducted at the regional level, with varied approaches to reporting, and may contain duplicate counts if a single individual interacts with the system by accessing services multiple times in a single year. On the other hand, individuals who never interact with formal systems providing services would not be included in HDIS data.

As currently written, this bill would require COGs to provide HCD with data on people experiencing homelessness and would allow HCD to accept or reject that information, or modify its own assumptions or methodology based on that information. The bill does not specify which data sources should be provided to HCD by the COG, or the basis on which HCD would accept or reject that data. On the one hand, this approach provides flexibility to HCD and the COGs in determining which data sources best identify the homeless housing needs of a given region. On the other hand, more specificity may be needed to establish a statewide precedent and approach, and to reduce subjectivity in the provision of data which will be critical to establishing the right household needs numbers in the proposed ELI and ALI income categories.

Arguments in Support: According to Housing California, "Despite rising homelessness in California, state law does not require local jurisdictions to plan for the housing needs of those who are unhoused or who have the lowest incomes. Current law requires local governments to plan for four income categories: very low-income households, low-income households, moderate-income households, and above moderate-income households. The very low-income category includes households with incomes up to 50% of area median income (AMI) despite significant variation within that category in terms of ability to afford housing. This makes it harder for local jurisdictions to adequately plan to meet the housing needs of California's most vulnerable residents and for the state to hold local jurisdictions accountable for failing to do so.

Explicitly requiring local jurisdictions to plan for the housing needs of Californians with the lowest incomes, including extremely low-income (ELI, 15-30% of AMI) and acutely low-income (ALI, 0-15% of AMI) is critical to ensure that the needs of Californians who are unhoused or at risk of experiencing homelessness are met. If the RHNA and housing element processes do not specifically require local governments to target these groups, their housing

needs will go unmet because housing them requires the deepest public subsidies and they often face landlord discrimination. Additionally, high-quality local homelessness data is necessary in order for the state to ensure the accuracy of the newly created income categories and for local jurisdictions to design programs that meet the needs of those who are unhoused.

AB 3093 will play an important role in helping local governments prevent and address homelessness and in holding them accountable when they fail to do so. By adding ELI and ALI categories to the RHNA process and requiring each region to submit accurate data to the state on the needs of individuals and families experiencing homelessness, the bill will help communities comprehensively plan to address homelessness.”

Arguments in Opposition: None on file.

Related Legislation:

SB 7 (Blakespear): Requires that annual progress reports (APRs) submitted to the Department of Housing and Community Development (HCD) include information on demolished or new housing units for extremely low-income households that have been issued a completed entitlement, building permit, or certificate of occupancy. SB 7 passed the Senate and is held at the desk in the Assembly.

REGISTERED SUPPORT / OPPOSITION:

Support

All Home
 Alliance San Diego
 California Coalition for Rural Housing
 California Housing Partnership Corporation
 Collaborising
 Compass Family Services
 Corporation for Supportive Housing
 Downtown Women's Center
 Housing California
 Housing Is a Human Right - Orange County
 Inner City Law Center
 LA Family Housing
 My Friend's Place
 Sacramento Homeless Union
 Sacramento Regional Coalition to End Homelessness
 Safe Place for Youth
 Santa Cruz Mental Health Advisory Board
 Steinberg Institute
 The People Concern
 Union Station Homeless Services
 Volunteers of America of Los Angeles
 West Valley People's Alliance
 YIMBY Action

Opposition

None on file.

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